

TSD File Inventory Index

Date: June 12, 2001

Initial: CMG/ewas

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Note: Transmittal Letter to Be Included with Reports.
Comments: _____

From: BRESLIN, JOHN (JBRESLIN)
To: R5ORC1:R5ARD:R5PMD:R5RCRA(BRUSSELL)
Date: Friday, January 28, 1994 9:01 am
Subject: Aero Plating -Reply

We were proceeding on the premise that there were violations of the state and federal regs. Therefore, we are citing both sets of regs. For our purposes we only need to cite the federal reg; so if Paul doesn't want us to tcite the state reg, that is fine. It's your call as far as I can see.

From: RUSSELL, BARBARA (BRUSSELL)
To: R5RCRA:R5WCB1:R5ESD:R5ORC1:JBRESLIN
Date: Wednesday, December 29, 1993 11:28 am
Subject: Maiorano -Reply

Hi John Happy Holidays, I just spoke with Paul my Supervisor about the Maiorano case Joe is out and will not be back until the January 4.

Paul has two questions: 1. why is DOJ reluctant to act on this case. This is a clear cut case of contempt. 2. Can we go after Shiner with an Administrative Order for the same thing simultaneously with Maiorano. If so he wants to maybe go after both. If not he wants to continue to go after Maiorano. He feels that again this is a clear cut case of contempt. And because of this, this case has been included in the Contempt Initiative. I have to admit that I am also inclined to continue to go after Maiorano.

When Joe gets back, we will meet with him regarding this issue. I believe at our last meeting, Joe wanted to continue to go after Maiorano. However, he may have a change of heart. We just have to wait and see. Hopefully, I will be able to get back with you the week of the 10th. Joe should have a clear calendar by then. In the meantime have a HAPPY NEW YEAR.

From: RUSSELL, BARBARA (R5RCRA:BRUSSELL)
Date: Wednesday, December 29, 1993 11:28 am
Subject: Maiorano -Reply

	Opened	Action
R5ORC1		12/29 11:26am
JBRESLIN	12/28 12:26pm	Delivered

Files	Size	Date/Time
MESSAGE	1088	12/29 11:28am

Host Name	Delivered	Route
R5ORC1	12/29 11:26am	R5RCRA:R5WCB1:R5ESD:R5ORC1

Options

Auto Delete:	No
Expiration Date:	None
Notify Recipients:	Yes
Priority:	Normal
Reply Requested:	No
Return Notification:	No
Concealed Subject:	No
Encryption:	WP Mail
Security:	Normal
To Be Delivered:	Immed
Status Tracking:	Open



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

SEP 30 1993

Daniel E. May
Assistant U.S. Attorney
Everett McKinley Dirksen Building
Room 1500 S
219 South Dearborn St.
Chicago, IL 60604

Re: U.S. v. Maiorano
Civil Action No. 87-C-4491

Dear Mr. May:

This letter will reflect EPA's understanding of the current strategy shared by our respective offices in proceeding with the resolution of the above-captioned case. Specifically, today you and I discussed our plans for attaining a cash settlement with Mr. Louis Maiorano.

Mr. Seymour Shiner, the owner of the two properties in question (1850 and 1860 N. Elston in Chicago), is preparing a sampling work plan for submittal to Illinois EPA, through his consultant, Dan Coyne of Aces Maintenance. This plan was due on September 15 in draft form, but IEPA allowed an extension (after discussions with Mr. Coyne) in order that the document would be more complete upon submittal. IEPA predicts that within a month or so it will be able to provide an estimate of the total cost of closing the site. Any actual remediation which will occur is planned to occur in early 1994.

It is U.S. EPA's view that the government should extract whatever payment possible from Mr. Maiorano to contribute to the cost of closure. You mentioned that Mr. Maiorano's attorney, Rod Jacobs, told you his client is willing to contribute toward the price of closure. Mr. Jacobs apparently envisions that any such contribution would be in the neighborhood of \$10,000. U.S. EPA's most recent information indicates that the cost of closure may exceed \$50,000. In that case, it is our view that Mr. Maiorano should be required to contribute significantly more than \$10,000. This is primarily because Mr. Maiorano caused the contamination in the buildings as operator of a facility which generated hazardous waste, and he was the subject of a federal court order requiring him to close the sites. Mr. Shiner, although he is also liable for closure under RCRA, is merely the owner of the

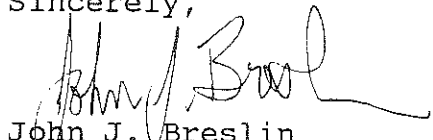
buildings, and did not own either building until the time when the Maioranos were ceasing operations. Given the enforcement discretion inherent in pursuing resolution of this case, U.S. EPA believes it important not to allow Mr. Maiorano to avoid his legal obligation to close these sites.

Procedurally, you and I agreed that you would take the lead on initiating settlement discussions with Mr. Jacobs. A prerequisite is that Department of Justice agrees to pursue a contempt action against Maiorano--in accordance with EPA's June 22, 1990 referral--if Maiorano refuses to settle. The discussions with Mr. Jacobs will commence after EPA provides you with technical information on the nature of the closure, including the estimated cost thereof. Assuming Department of Justice and EPA agree to any settlement, we envision entry of a Satisfaction and Release, whereby Mr. Maiorano would be released from his obligation to close the facility under the October 28, 1987 Court Order in exchange for a payment to be applied toward Mr. Shiner's closure expenses.

This course of action assumes that Mr. Shiner will carry out his expressed intent to close the sites in accordance with IEPA's requirements and in a reasonable time frame. As far as I can tell, based on discussions with Mr. Shiner, his consultant, and IEPA, Mr. Shiner does plan on following through with the closure.

Please contact me and let me know the results of any further discussions within DOJ or with any questions or comments.

Sincerely,



John J. Breslin
Assistant Regional Counsel

cc: Deb Garber
Barbara Russell, HRE-8J
Steve Willey, DOJ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

November 26, 1990

5CS-TUB-7
REPLY TO ATTENTION OF:

Mr. Charles Gruntman
Illinois Environmental Protection Agency
1701 First Avenue
Maywood, IL 60153

Dear Mr. Gruntman,

I understand that you are out of the office until the first week of December, but wanted the enclosed affidavit to be ready for your signature upon your return. The Department of Justice is prepared to proceed with the contempt action against the Maioranos, and will do so once your affidavit is completed.

Please review the affidavit, sign it, and return it to me if no corrections are necessary. Otherwise, please call me at (312) 886-0748 to make any changes. Thank you for your prompt attention to this matter.

Sincerely,

Elizabeth O. Murphy
Elizabeth O. Murphy

cc: Donald Gimbel

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 87-C-4491
	)	Judge Rovner
)	
LOUIS J. MAIORANO, Sr. and)	
LOUIS J. MAIORANO, Jr. d/b/a)	
Aero Plating Works, Inc.,)	
)	
Defendants)	

AFFIDAVIT IN SUPPORT
OF MOTION TO ADJUDGE
DEFENDANTS IN CIVIL CONTEMPT

STATE OF ILLINOIS)	
)	
	)	ss:
COUNTY OF COOK)	

I, Charles Gruntman, being duly sworn, depose and state that:

- 1) I have been employed by the Illinois Environmental Protection Agency (IEPA) since October 23, 1973, and presently work in the IEPA Department of Land Pollution Control;
- 2) As an employee of the IEPA, one of my duties is to investigate hazardous waste facilities' compliance with closure requirements;

- 3) IEPA has received a copy of an October 28, 1987 Judgement entered by this Court, requiring defendants Louis Maiorano, Jr. and Louis Maiorano, Sr. to: (a) amend and resubmit for Illinois Environmental Protection Agency's (IEPA's) approval a previously submitted closure plan; (b) within thirty (30) days of IEPA approval of the plan, complete closure in accordance with the approved plan; and (c) within sixty (60) days of completion, submit a certification of closure to the IEPA;
- 4) The defendants submitted a closure plan, with respect to the Aero Plating Works, Inc. facility, which was prepared by Ronald Bahr of Scientific Control Laboratories;
- 5) IEPA approved the defendants closure plan on July 25, 1988;
- 6) On August 27, 1990, Ronald Bahr informed me by telephone that Scientific Control Laboratories did not conduct closure activities at the Aero Plating Works, Inc. facility;
- 7) As an employee with IEPA, I assisted other IEPA employees in determining whether defendants Louis Maiorano, Sr. and Louis Maiorano, Jr. had submitted a certification of closure of the Aero Plating Works, Inc. facility;
- 8) IEPA's Aero Plating Works site files do not contain sampling data, certification of closure, nor any other documentation

supporting the possibility that RCRA closure has occurred at the facility;

9) I inspected the Aero Plating Works, Inc. facility, located at 1860 North Elston Avenue, Chicago, Illinois on August 23, 1990 and again on August 31, 1990;

10) As a result of my inspection, I could not determine, through visual inspection, whether or not the defendants completed closure at the facility and that all hazardous waste had been removed;

11) It is IEPA's practice to notify the operators of RCRA facilities of any violations of closure requirements;

12) IEPA sent notice of the apparent violations of closure requirements at the Aero Plating Works facility to the operator of the Aero Plating Works facility, Louis Maiorano, Jr., in the form of a Compliance Inquiry Letter, a Pre-Enforcement Conference Letter, and copies of two Inspection Reports, all of which cited violations of 35 Ill. Adm. Code § 725.215 (failure to submit closure documentation and certification);

13) The defendants have failed, and continue to fail, to comply with this Court's order to complete closure activities at the facility and to submit a certification of closure for the facility.

SWORN TO AND SUBSCRIBED
before me this _____ day of
_____, 1990.

NOTARY PUBLIC



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

MEMORANDUM

REPLY TO ATTENTION OF:

DATE: October 24, 1990
SUBJECT: U.S. v Maioranos
From: Liz Murphy *LM*
TO: Colin Carrier

Colin, enclosed is a copy of the receipts of certified mail from the Maioranos, evidencing their receipt of the 3007 Information Requests. Neither of the Maioranos has yet responded to the requests. I am also sending another draft affidavit for Charles Gruntman and one for Ron Brown. Let me know if I can do anything else to help move this case along. Thanks! Liz



SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees and services available, consult postmaster for fees and check box(es) for additional services requested.

1. ☐ Show to whom delivered, date, and addresser's address. 2. ☐ Restricted Delivery (Extra charge)

3. Article Addressed to:

Louis J. Maiorano, Jr.
422 Mill Valley
Palatine, IL 60067

4. Signature - Addressee

5. Signature - Sender

6. Date of Delivery

7. Post Office Number

8. Type of Service

9. Insured

10. COD

11. Return Receipt for Merchandise

12. Signature of addressee

13. Signature of sender (ONLY if requested and fee paid)

PS Form 3811, Apr. 1989

DOMESTIC RETURN RECEIPT

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees and services available, consult postmaster for fees and check box(es) for additional services requested.

1. ☐ Show to whom delivered, date, and addresser's address. 2. ☐ Restricted Delivery (Extra charge)

3. Article Addressed to:

Louis J. Maiorano, Sr.
1215 Saunders Road
Riverwoods, IL 60015

4. Signature - Addressee

5. Signature - Sender

6. Date of Delivery

7. Post Office Number

8. Type of Service

9. Insured

10. COD

11. Return Receipt for Merchandise

12. Signature of addressee

13. Signature of sender (ONLY if requested and fee paid)

PS Form 3811, Apr. 1989

U.S.G.P.O. 1986-238-815

DOMESTIC RETURN RECEIPT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 87-C-4491
	)	Judge Rovner
)	
LOUIS J. MAIORANO, Sr. and)	
LOUIS J. MAIORANO, Jr. d/b/a)	
Aero Plating Works, Inc.,)	
)	
Defendants)	

AFFIDAVIT IN SUPPORT
OF MOTION TO ADJUDGE
DEFENDANTS IN CIVIL CONTEMPT

STATE OF ILLINOIS)
)
) ss:
COUNTY OF COOK

I, Ronald E. Brown, being duly sworn, depose and state that:

1) I am an employee of the plaintiff, United States, in the Environmental Protection Agency's RCRA Enforcement Section, located in Chicago, Illinois;

2) On October 1987, this court entered judgment herein requiring defendants Louis Maiorano, Jr. and Louis Maiorano, Sr. to: (a) amend and resubmit for Illinois Environmental Protection Agency's

(IEPA's) approval a previously submitted closure plan; (b) within thirty (30) days of approval of the plan, complete closure in accordance with the approved plan; and (c) upon completion submit a certification of closure to the IEPA, within sixty (60) days of completion;

3) IEPA has informed me that the defendants have failed to demonstrate completion of closure of the Aero Plating Works facility;

4) The United States Environmental Protection Agency (U.S. EPA), on September 4, 1990, issued an information request, pursuant to its authority under Section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6927, wherein defendants were asked to state whether or not they implemented the IEPA-approved closure plan and to submit a copy of the certification of closure to the U.S. EPA;

5) Louis Maiorano, Jr. received the information request on September 7, 1990 and Louis Maiorano, Sr. received the information request on September 10, 1990.

6) Response to the information request was due within ten (10) days of its receipt;

7) Defendants have failed and still fail to comply with said information request.

8) Defendants have failed and still fail to comply with this court's order to complete closure activities at the facility and to submit a certification of closure for the facility.

SWORN TO AND SUBSCRIBED
before me this _____ day of
_____, 1990.

NOTARY PUBLIC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 87-C-4491
	)	Judge Rovner
)	
LOUIS J. MAIORANO, Sr. and)	
LOUIS J. MAIORANO, Jr. d/b/a)	
Aero Plating Works, Inc.,)	
)	
Defendants)	

AFFIDAVIT IN SUPPORT
OF MOTION TO ADJUDGE
DEFENDANTS IN CIVIL CONTEMPT

STATE OF ILLINOIS)	
)	
	)	SS:
COUNTY OF COOK)	

I, Charles Gruntman, being duly sworn, depose and state that:

1) As an employee of the Illinois Environmental Protection Agency, one of my duties is to investigate hazardous waste facilities' compliance with closure requirements;

2) IEPA has received a copy of an October 28, 1987 judgement entered by this court, requiring defendants Louis Maiorano, Jr. and Louis Maiorano, Sr. to: (a) amend and resubmit for Illinois

Environmental Protection Agency's (IEPA's) approval a previously submitted closure plan; (b) within thirty (30) days of IEPA approval of the plan, complete closure in accordance with the approved plan; and (c) within sixty (60) days of completion, submit a certification of closure to the IEPA;

3) The defendants submitted a closure plan which was prepared by Ronald Bahr of Scientific Control Laboratories, and was approved by IEPA on July 25, 1988;

4) On August 27, 1990, Ronald Bahr informed me that Scientific Control Laboratories did not conduct closure activities at the Aero Plating Works facility;

5) IEPA's Aero Plating Works site files do not contain sampling data, certification of closure, nor any other documentation supporting the possibility that RCRA closure has occurred at the facility;

6) I inspected the facility on August 23, 1990 and August 31, 1990;

7) There is no way of determining, through visual inspection, whether or not the defendants completed closure at the facility;

8) It is IEPA's practice to notify the operators of RCRA facilities of any violations of closure requirements;

9) Notice of the apparent violations of closure requirements at the Aero Plating Works facility were sent to the operator of the facility, Louis Maiorano, Jr., in the form of a Compliance Inquiry Letter, a Pre-Enforcement Conference Letter and copies of two Inspection Reports, all of which cited violations of 35 Ill. Adm. Code § 725.215 (failure to submit closure documentation and certification);

10) The defendants have failed and continue to fail to comply with this court's order to complete closure activities at the facility and to submit a certification of closure for the facility.

SWORN TO AND SUBSCRIBED
before me this _____ day of
_____, 1990.

NOTARY PUBLIC



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF

5CS-TUB-7

SEP 4 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Louis J. Maiorano, Sr.
1215 Saunders Road
Riverwoods, IL 60015

Re: Request for Information Pursuant to Section 3007 of RCRA,
for the Aero Plating Works facility Formerly Operated at
1860 N. Elston, Chicago, Illinois.

Dear Sir:

The United States Environmental Protection Agency (U.S. EPA) is currently investigating the source, extent and nature of the release or threatened release of hazardous substances, pollutants or contaminants, at the former Aero Plating Works facility, located at 1860 N. Elston, Chicago, Illinois, hereinafter referred to as the "Site". This investigation requires inquiry into the closure activities performed at the Site.

Pursuant to Section 3007 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6927, you are hereby requested to respond to the Information Requests enclosed. Compliance with the enclosed Information Requests is mandatory. Failure to respond fully and truthfully to each and every Information Request within ten (10) days of receipt of this letter, or to adequately justify such failure to respond, can result in enforcement action by U.S. EPA pursuant to Section 3008 of RCRA under which U.S. EPA may seek the imposition of penalties of up to twenty-five thousand dollars (\$25,000) for each day of continued noncompliance. "Non-compliance" is considered by U.S. EPA to be not only failure to respond to the Requests but also failure to respond completely and truthfully to each Request. Please be further advised that provision of false, fictitious, or fraudulent statements or representations may subject you to criminal penalties of up to ten thousand dollars (\$10,000) or up to five (5) years of imprisonment or both under 18 U.S.C. Section 1001. The U.S. EPA has the authority to use the information requested herein in an administrative, civil or criminal action.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. Section 3501, et seq.

Your response to this Information Request should be mailed to:

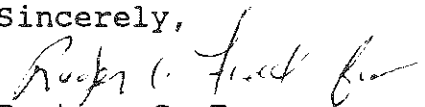
Elizabeth O. Murphy
Assistant Regional Counsel
U.S. Environmental Protection Agency, 5CS-TUB-7
230 South Dearborn Street
Chicago, Illinois 60604

Please direct any questions you may have to Elizabeth Murphy at (312) 886-0748.

Due to the legal ramifications of your failure to respond promptly and properly, U.S., EPA strongly encourages you to give this matter your immediate attention and to respond to these Information Requests within the time specified above.

Thank you for your cooperation in this matter.

Sincerely,


Bertram C. Frey
Acting Regional Counsel

Enclosure

INSTRUCTIONS

1. A separate response must be made to each of the questions set forth in this Information Request.
2. Precede each answer with the number of the Information Request to which it corresponds.
3. In answering each Information Request, identify all contributing sources of information.
4. If information not known or not available to the Respondent as of the date of submission of its response should later become known or available, Respondent must supplement its response to U.S. EPA. Moreover, should the Respondent find, at any time after the submission of its response that any portion of the submitted information is false or misrepresents the truth, respondent must notify U.S. EPA as soon as possible.
5. For each document produced in response to this request for Information, indicate on the document, or in some other reasonable manner, the number of the question to which it responds.
6. You must respond to the Information Request on the basis of all information and documents in your possession, custody or control or in the possession, custody or control of your former or current employees, agents, servants, contractors or attorneys. Furnish such information as is available to you, regardless of whether or not it is based on personal knowledge, and regardless of source.
7. Your response should be accompanied by a notarized affidavit stating that a diligent record search has been made.
8. If any documents requested herein have been transferred voluntarily or involuntarily to others or have been otherwise disposed of, identify each such document, identify the person to whom it was transferred, describe the circumstances surrounding such transfer or other disposition, and state the date or approximate date of such transfer or other disposition.
9. The information requested herein must be provided notwithstanding its possible characterization as confidential information or trade secrets. You may, if you desire, assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. 2.203(b). Information covered by such a claim will be disclosed by U.S. EPA only to the extent, and only by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. [See 41 Federal Register 36902 et seq. (September 1, 1976); 43 Federal Register 4000 et seq. (December 18, 1978)]. If no such claim accompanies the information when it is received by U.S. EPA it may be made available to the public by U.S. EPA without further

notice to you. You should read carefully the above-cited regulations, together with the standards set forth in Section 104(e)(7) of CERCLA, before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim, as stated in Section 104(e)(7)(ii) of CERCLA.

DEFINITIONS

For the purpose of the Instructions and Requests for Information set forth herein, the following definitions shall apply:

1. The term "you" or "Respondent" shall mean the addressee of the Request, the addressee's officers, managers, employees, contractors, trustees, predecessors, successors, assigns, subsidiaries, and agents.
2. The term "person" as used herein includes, in the plural as well as the singular, any natural person, firm, contractor, unincorporated association, partnership, corporation, trust or governmental entity, unless the context indicates otherwise.
3. "The Site" or "The Facility" shall mean and include the entire property located at 1860 N. Elston, Chicago, Illinois, on which the Aero Plating Works facility was located, referenced to as the Site.
4. The term "hazardous substance" shall have the same definition as that contained in Section 101(14) of CERCLA, including mixtures of hazardous substances with other substances including petroleum products.
5. The term "pollutant" or "contaminant" shall have the same definition as that contained in Section 101(33) of CERCLA.
6. The terms "furnish", "describe", or "indicate" shall mean turning over to U.S. EPA either original or duplicate copies of the requested information in the possession, custody, or control of the Respondent. Where specific information has not been memorialized in any document but is nonetheless responsive to an information request, you must respond to the request with a written response. If such requested information is not in your possession, custody, or control then indicate where such information or documents may be obtained.
7. The term "identify" means, with respect to a natural person, to set forth his full name, present or last known business address, the name of that employer and a description of the job responsibilities of such person.
8. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship) to set forth its full

name, address, legal form (e.g. corporation, partnership, etc.) organization, if any, and a brief description of its business.

9. The term "identify" means, with respect to a document, to provide its customary business description, its date, its number if any (invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance of the subject matter.

10. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substances or pollutants or contaminants.

11. As used here, "document" and "documents" shall include writings of any kind, formal or informal, whether or not wholly or partially in handwriting (including by the way of illustration and not by way of limitation), any invoice, receipt, endorsement, check, bank draft, cancelled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memorandum of telephone and other conversations including meetings, agreements, and the like, diary, calendar, desk pad, scrap book, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, report, notice, message, analysis, comparison, graph, chart, interoffice or intraoffice communications, photostat or other copy of any documents, microfilm or other film record, any photograph, sound recording on any type of device, any punch card, disc, or disc pack; and any tape or other type of memory generally associated with computers and data processing (together with the programming instructions and other written material necessary to use such punch card, disc or disc pack, tape or other type of memory and together with printouts of such punch card, disc or disc pack, video tape or other type of memory); including (a) every copy of each document which is not an exact duplicate of a document which is produced, (b) every copy which has any writing, figure or notation, annotation or the like of it, (c) drafts, (d) attachments to or enclosures with any documents and (e) every document referred to in any other document.

12. "And" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Information Requests any information which might otherwise be construed to be outside their scope.

REQUESTS

1. Did you implement the closure plan for the Site which was submitted by Scientific Control Laboratories, Inc. to the Illinois Environmental Protection Agency (IEPA) in June 1988 and approved by IEPA on July 25, 1988?
2. Identify the professional engineer or engineering company that performed the closure activities at the Site.
3. Did you certify completion of closure to IEPA? If so, on what date and to whom was the certification sent or delivered?
4. Provide a copy of the certification of closure of the Site.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

5CS-TUB-7

SEP 4 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Louis J. Maiorano, Jr.
422 Mill Valley
Palatine, IL 60067

Re: Request for Information Pursuant to Section 3007 of RCRA,
for the Aero Plating Works facility Formerly Operated at
1860 N. Elston, Chicago, Illinois.

Dear Sir:

The United States Environmental Protection Agency (U.S. EPA) is currently investigating the source, extent and nature of the release or threatened release of hazardous substances, pollutants or contaminants, at the former Aero Plating Works facility, located at 1860 N. Elston, Chicago, Illinois, hereinafter referred to as the "Site". This investigation requires inquiry into the closure activities performed at the Site.

Pursuant to Section 3007 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6927, you are hereby requested to respond to the Information Requests enclosed. Compliance with the enclosed Information Requests is mandatory. Failure to respond fully and truthfully to each and every Information Request within ten (10) days of receipt of this letter, or to adequately justify such failure to respond, can result in enforcement action by U.S. EPA pursuant to Section 3008 of RCRA under which U.S. EPA may seek the imposition of penalties of up to twenty-five thousand dollars (\$25,000) for each day of continued noncompliance. "Non-compliance" is considered by U.S. EPA to be not only failure to respond to the Requests but also failure to respond completely and truthfully to each Request. Please be further advised that provision of false, fictitious, or fraudulent statements or representations may subject you to criminal penalties of up to ten thousand dollars (\$10,000) or up to five (5) years of imprisonment or both under 18 U.S.C. Section 1001. The U.S. EPA has the authority to use the information requested herein in an administrative, civil or criminal action.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. Section 3501, et seq.

Your response to this Information Request should be mailed to:

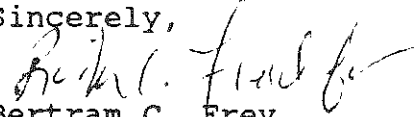
Elizabeth O. Murphy
Assistant Regional Counsel
U.S. Environmental Protection Agency, 5CS-TUB-7
230 South Dearborn Street
Chicago, Illinois 60604

Please direct any questions you may have to Elizabeth Murphy at (312) 886-0748.

Due to the legal ramifications of your failure to respond promptly and properly, U.S.. EPA strongly encourages you to give this matter your immediate attention and to respond to these Information Requests within the time specified above.

Thank you for your cooperation in this matter.

Sincerely,


Bertram C. Frey
Acting Regional Counsel

Enclosure

INSTRUCTIONS

1. A separate response must be made to each of the questions set forth in this Information Request.
2. Precede each answer with the number of the Information Request to which it corresponds.
3. In answering each Information Request, identify all contributing sources of information.
4. If information not known or not available to the Respondent as of the date of submission of its response should later become known or available, Respondent must supplement its response to U.S. EPA. Moreover, should the Respondent find, at any time after the submission of its response that any portion of the submitted information is false or misrepresents the truth, respondent must notify U.S. EPA as soon as possible.
5. For each document produced in response to this request for Information, indicate on the document, or in some other reasonable manner, the number of the question to which it responds.
6. You must respond to the Information Request on the basis of all information and documents in your possession, custody or control or in the possession, custody or control of your former or current employees, agents, servants, contractors or attorneys. Furnish such information as is available to you, regardless of whether or not it is based on personal knowledge, and regardless of source.
7. Your response should be accompanied by a notarized affidavit stating that a diligent record search has been made.
8. If any documents requested herein have been transferred voluntarily or involuntarily to others or have been otherwise disposed of, identify each such document, identify the person to whom it was transferred, describe the circumstances surrounding such transfer or other disposition, and state the date or approximate date of such transfer or other disposition.
9. The information requested herein must be provided notwithstanding its possible characterization as confidential information or trade secrets. You may, if you desire, assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. 2.203(b). Information covered by such a claim will be disclosed by U.S. EPA only to the extent, and only by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. [See 41 Federal Register 36902 et seq. (September 1, 1976); 43 Federal Register 4000 et seq. (December 18, 1985)]. If no such claim accompanies the information when it is received by U.S. EPA it may be made available to the public by U.S. EPA without further

notice to you. You should read carefully the above-cited regulations, together with the standards set forth in Section 104(e)(7) of CERCLA, before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim, as stated in Section 104(e)(7)(ii) of CERCLA.

DEFINITIONS

For the purpose of the Instructions and Requests for Information set forth herein, the following definitions shall apply:

1. The term "you" or "Respondent" shall mean the addressee of the Request, the addressee's officers, managers, employees, contractors, trustees, predecessors, successors, assigns, subsidiaries, and agents.
2. The term "person" as used herein includes, in the plural as well as the singular, any natural person, firm, contractor, unincorporated association, partnership, corporation, trust or governmental entity, unless the context indicates otherwise.
3. "The Site" or "The Facility" shall mean and include the entire property located at 1860 N. Elston, Chicago, Illinois, on which the Aero Plating Works facility was located, referenced to as the Site.
4. The term "hazardous substance" shall have the same definition as that contained in Section 101(14) of CERCLA, including mixtures of hazardous substances with other substances including petroleum products.
5. The term "pollutant" or "contaminant" shall have the same definition as that contained in Section 101(33) of CERCLA.
6. The terms "furnish", "describe", or "indicate" shall mean turning over to U.S. EPA either original or duplicate copies of the requested information in the possession, custody, or control of the Respondent. Where specific information has not been memorialized in any document but is nonetheless responsive to an information request, you must respond to the request with a written response. If such requested information is not in your possession, custody, or control then indicate where such information or documents may be obtained.
7. The term "identify" means, with respect to a natural person, to set forth his full name, present or last known business address, the name of that employer and a description of the job responsibilities of such person.
8. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship) to set forth its full

name, address, legal form (e.g. corporation, partnership, etc.) organization, if any, and a brief description of its business.

9. The term "identify" means, with respect to a document, to provide its customary business description, its date, its number if any (invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance of the subject matter.

10. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substances or pollutants or contaminants.

11. As used here, "document" and "documents" shall include writings of any kind, formal or informal, whether or not wholly or partially in handwriting (including by the way of illustration and not by way of limitation), any invoice, receipt, endorsement, check, bank draft, cancelled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memorandum of telephone and other conversations including meetings, agreements, and the like, diary, calendar, desk pad, scrap book, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, report, notice, message, analysis, comparison, graph, chart, interoffice or intraoffice communications, photostat or other copy of any documents, microfilm or other film record, any photograph, sound recording on any type of device, any punch card, disc, or disc pack; and any tape or other type of memory generally associated with computers and data processing (together with the programming instructions and other written material necessary to use such punch card, disc or disc pack, tape or other type of memory and together with printouts of such punch card, disc or disc pack, video tape or other type of memory); including (a) every copy of each document which is not an exact duplicate of a document which is produced, (b) every copy which has any writing, figure or notation, annotation or the like of it, (c) drafts, (d) attachments to or enclosures with any documents and (e) every document referred to in any other document.

12. "And" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Information Requests any information which might otherwise be construed to be outside their scope.

REQUESTS

1. Did you implement the closure plan for the Site which was submitted by Scientific Control Laboratories, Inc. to the Illinois Environmental Protection Agency (IEPA) in June 1988 and approved by IEPA on July 25, 1988?
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4. Provide a copy of the certification of closure of the Site.



Refer to: 0316230001 - Cook County
Aero Plating Works
ILD005125836
Compliance File

August 29, 1990

Ms. Elizabeth Murphy
Assistant Regional Counsel
U.S. Environmental Protection Agency
230 So. Dearborn Street, 5C-16
Chicago, IL 60604

RECEIVED
AUG 31 1990
OFFICE OF RCRA
Waste Management Division
U.S. EPA, REGION V

Re: Third Supplemental to Request for Compliance Order
Louis Maiorano, Jr., d/b/a Aero Plating Works
IEPA File 7038 HAZ

Dear Ms. Murphy:


On February 23, 1984 this Agency requested the U.S. Environmental Protection Agency to issue a Compliance Order to Louis Maiorano, Jr., d/b/a Aero Plating Works. Since that time your office has prosecuted the case both administratively and before the U.S. District Court. Supplements to this referral were mailed to you on September 13, 1989 and January 8, 1990.

This letter further supplements the IEPA referral. A recent IEPA inspection on August 23, 1990 revealed Mr. Maiorano has still failed to complete closure activities at the site as required by 35 Ill. Adm. Code 725.215. This is the same violation that was referred on September 13, 1989 and January 8, 1990. The inspection report relating to this non-compliance is enclosed.

We request that you continue your enforcement action against Louis Maiorano, Jr. and Louis Maiorano, Sr. to seek compliance with this regulation now being violated.

Thank you for your service in this matter.

Sincerely,


Donald L. Gimbel
Assistant Counsel
Division of Legal Counsel

DLG:pgb:2013P

Enclosure

cc: Bill Muno, USEPA ✓
Bill Radlinski
Scott Phillips
Division File
Maywood Region
Linda Cooper



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

RECEIVED

AUG 03 1990

U.S. EPA, REGION V
WASTE MANAGEMENT DIVISION
OFFICE OF THE DIRECTOR
CC: RF

JUL 31 1990

MEMORANDUM

OFFICE OF
ENFORCEMENT

SUBJECT: OE Review of a Direct Referral to the Department of Justice for Initiation of Civil Contempt Proceedings and Appropriate Relief Pursuant to Rule 70 of the Federal Rules of Civil Procedure: Aero Plating Works, Inc., Chicago, Ill.

FROM: Kathie Stein
Acting Associate Enforcement Counsel
for RCRA

TO: Valdas V. Adamkus
Regional Administrator, Region V

I have received a copy of the June 22, 1990 referral package referring the above-referenced matter to the Department of Justice for civil action. We have identified no significant legal or policy issues which we believe will require resolution before the initiation of this action. However, we have agreed with your staff that an additional inspection of the facility is advisable in final preparation for this action, and that this will take place within the next 30 days. A separate memorandum is being sent to the Solid Waste and Emergency Response Branch Chief confirming our understanding of this agreement. The Office of Enforcement staff contact on this case is:

Mimi Newton
U.S. Environmental Protection Agency
Office of Enforcement
RCRA Division (LE-134S)
401 M Street, S.W.
Washington, D.C. 20460
FTS 382-3096

If you have any questions about this referral, please contact me or have a member of your staff contact the identified OE staff attorney assigned to this matter.

cc: Bruce M. Diamond, Director, Office of Waste Programs
Enforcement
Bertram C. Frey, Acting Regional Counsel, Region V
Richard B. Stewart, Assistant Attorney General, Environment
and Natural Resources Division, U.S. Department of
Justice
David T. Buente, Chief, Environmental Enforcement Section,
Environment and Natural Resources Division, U.S.
Department of Justice

**Illinois Environmental Protection Agency
Division of Land Pollution Control**

RCRA INSPECTION REPORT

USEPA #:	1 L 2005125826	EPA #:	0316230001
Facility Name:	Aero Plating Works	Phone #:	
Street Address:	1860 N. Elston	County:	Cook
City:	Chicago	State:	IL
Region:	Maywood	Zip:	60622
Inspection Date:	8/23/90	From:	1:30 p
Weather:	Sunny 80: F	To:	4:00 p

TYPE OF FACILITY

Notified As: G		Regulated As: (5)	
N	LDF? <small>(Yes or No)</small>	N	90-Day F/U Required?: NO <input checked="" type="checkbox"/>

TYPE OF INSPECTION

CEI: ☒ Sampling: _____ Citizen Complaint: _____ Closed: _____ Other: _____
CME/O&M: _____ Record Review: ☒ Follow-Up to Inspection of: _____ Withdrawal: _____

NON-REGULATED STATUS

ECG: None Claimed Nonhandler: None Other (Specify in Narrative): None

PART A

Notification Date: 9 / 2 / 81 from (Initial) or (subsequent) Notification.

Initial Part A Date: / / Amended: / /

Part A Withdrawal requested: / / Approved by (US)(IL) EPA: / /

PART B PERMIT APPLICATION:Part B Permit Submitted: Y or N _____/_____/_____
Final Permit Issued: _____/_____/_____

ENFORCEMENT

Has the firm been referred to — USEPA ☒ Y or N 2/23/84
Illinois Attorney General: Y or ☒ N / / County State's Attorney: Y or ☒ N / /

ORDERS ASSURED

CACO: 9 / 10 / 84 CAFO: 2 / 13 / 84 Consent Decree: / /
Federal Court Order: / / State Court Order: / / IPCB Order: / /

TSD FACILITY ACTIVITY SUMMARY[illegible]

OWNER

OPERATOR

Name <u>Seymour Shiner</u>	Name <u>out of business</u>
Address _____	Address _____
City _____	City _____
State _____ Zip _____	State _____ Zip _____
Phone # <u>312/743-5210</u>	Phone # _____

PERSON(S) INTERVIEWED

TITLE

PHONE #

Richard Postillion	Riverwest operator	312/276-4046
Bob Braziel	Answering Machine	312/235-2604
Row Bahr	Scientific Control	
Toni Marvel	IEPA	
Ruth Allen	IEPA	
Mark Schellenberger	IEPA Permitter	

INSPECTION PARTICIPANT(S)

AGENCY/TITLE**PHONE #**[illegible]

PREPARED BY

AGENCY/TITLE

PHONE #

Charles Gruntman	IEPA / EPS	708/345-9780
------------------	------------	--------------

SUMMARY OF APPARENT VIOLATIONS:

[illegible][illegible][illegible]

August 23, 1990
0316230001-Cook County
Aero Plating Works
ILD005125836

Inspection Narrative

Aero Plating Works formerly located at 1850-1860 N. Elston Avenue, Chicago, generated and stored hazardous waste containing chromium, cyanide, and nickel. The company ceased operating in 1984. Because of apparent RCRA violations, the company was referred to USEPA on February 23, 1984. A CACO was issued on September 10, 1984 and a CAFO was issued on February 13, 1986. This inspection and record review was conducted to determine if the site completed RCRA closure in conformance with an IEPA approved closure plan.

I reviewed the Aero Plating site file at the IEPA Maywood Regional office. The file contained a closure plan prepared by Ronald Bahr of Scientific Control Laboratories; however, the file did not contain closure documentation or certification or any information that RCRA closure had occurred. Moreover, the file contained the last IEPA inspection report prepared by Carol Graszer. That inspection was conducted on November 6, 1989. That report concluded that "closure certification has not been submitted to the Agency."

I contacted Todd Marvel of IEPA headquarters. He reviewed Aero Plating's site file located in the IEPA Springfield headquarters. Marvel reported to me on August 27, 1990 that the headquarters file does not contain a closure certification nor any information supporting that RCRA closure has occurred.

On August 24, 1990 I contacted Ruth Allen of IEPA. She maintains a Closure Log book. Allen stated that the log book shows that a closure certification from Aero Plating was received by the IEPA on September 12, 1988. Allen further stated that the Aero Plating information was entered into her log book on a day that she was not at work. She stated that she had never seen or processed a closure certification from Aero Plating.

On August 23, 1990 I contacted Mark Schollenberger of IEPA. He is the IEPA permitter assigned to review Aero Plating's closure plan, closure documentation and closure certifications. Schollenberger stated that he has never received a closure certification or closure documentation concerning Aero Plating. He stated that because of the entry in the closure log book, he requested of the owner/operator that duplicate certification and documentation be sent to IEPA. According to Schollenberger, the owner/operator refused.

I was able to talk with Ronald Bahr of Scientific Control Laboratories on August 27, 1990. He prepared the closure plan for Aero Plating. Bahr confirmed that he prepared the closure plan but stated that those closure activities were never conducted, as far as he knows.

August 23, 1990
0316230001-Cook County
Aero Plating Works
ILD005125836
Page 2

Site Visit on August 23, 1990.

1860 Elston contains the two story building that once housed Aero Plating's operations on the first and basement floors. This area is now occupied by Riverwest, a tavern which is scheduled to open in September 1990. I was able to talk with the operator, Richard Postillion (312/276-4846). He stated that he has completely remodeled the first floor by removing walls and installing new floors. Postillion stated that the basement was clean when he took over about 5 months ago; however, he added that he plans to cement-coat the basement walls to eliminate moisture and seepage. He will use the basement for storage of business supplies. I observed no hazardous waste at this location.

I was not able to enter the second story of 1860 Elston. A sign at the entrance door stated that it was occupied by "Fox Kenneday - Anita Zurawski", an interior design company.

1850 thru 1858 Elston contains the one story building that once housed Aero Plating operations. 1850 is currently occupied by Anderson Heating (312/235-2604), a sheet metal fabricating shop. I was able to talk with Bob Brazel who was working there. Brazel stated that a sand blasting service was located at that location before he moved in. He claimed that he was forced to clean up silica sand which was left all over the floor. I observed no hazardous waste at the location.

The doors for 1852 thru 1858 Elston were locked and no one answered. Signs on the doors or outside walls indicated that the following business had occupied (or are occupying) that area of the building:

- American Inmate Phone Systems (moved out)
- American Pay Telephone Corp.
- Morris Decorating

As of August 28, 1990, I am still trying to contact Seymour Shiner, the owner of the properties, to arrange a site inspection of the areas of the buildings that I could not see on August 23, 1990.

Information obtained during this investigation suggests that the RCRA closure documentation and closure certification have not been submitted to the Illinois EPA. Although no hazardous wastes were observed in the areas inspected, the undocumented closure activities conducted by Aero Plating and the clean-ups conducted by each new tenant do not prove that the building has been properly decontaminated. If available, the analysis results from the

August 23, 1990
0316230001-Cook County
Aero Plating Works
ILD0005125836
Page 3

sampling specified in the approved closure plan along with the other closure documentation and closures certification are required to prove proper RCRA closure.

Continuing Apparent Violation

/25.215 - RCRA closure certification has not been submitted to the Illinois EPA.

CG:bj:0170j

FORMER AGENT OF
MICHEL SODINIAN
PROCESSING TANK

FILED OF
STORY BUREAU
OF THE

ESTON AVE.

AREA 5 - CHEMICAL
CAGE ROOM USED TO
STORE WHITE SUITS
FROM MICHEL TREATMENT

1. 3. 5. 7. 9.

AREA A - AREA USED
TO STORE INJUNCTIONS
INVASIVE REMOVED FROM
EASEMENT FACING OCEAN SIDE

BESY CI.

AERO PLANE

SCALE $\frac{3}{8}'' = 10'$
5/20/93 

2-2-3-2

CORTLAND ST.

Illinois Environmental
Protection Agency Photographs

Date: AUG. 23, 1990

Time: 1:30 to 4:00 P

Site Name: Aero Plating works

Site #: 0316230001

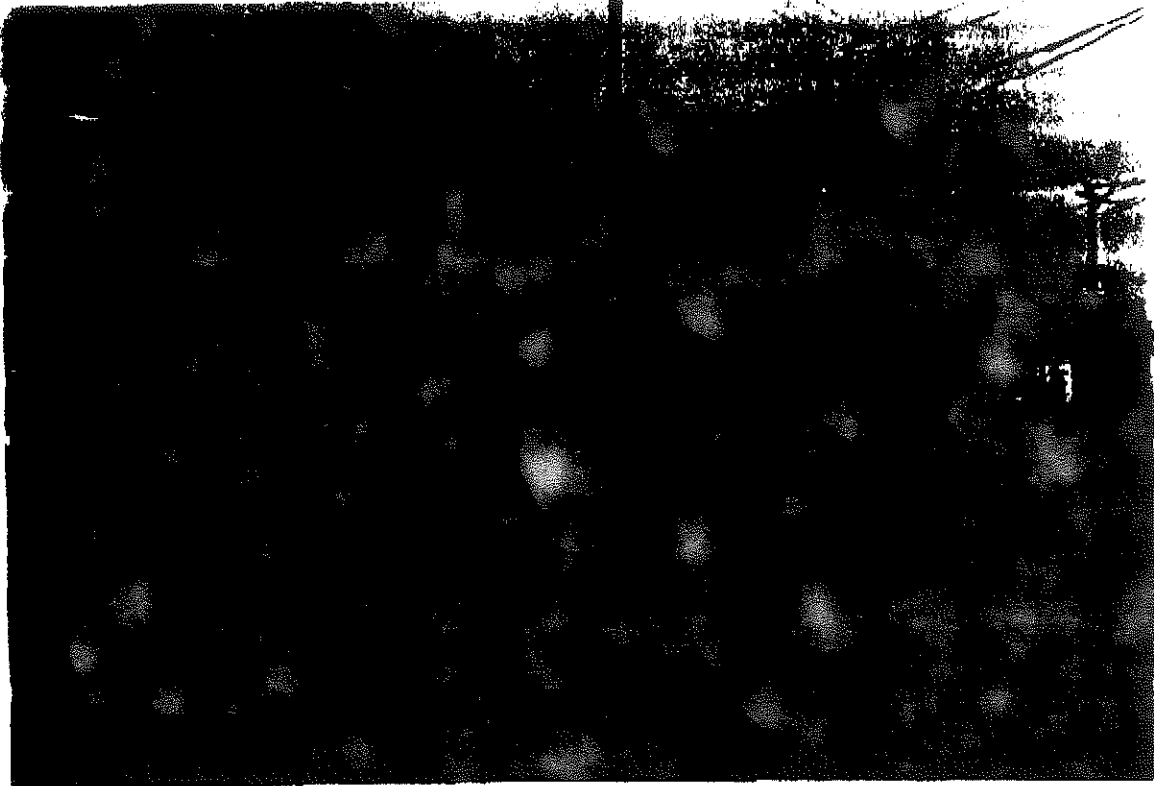
Comments: FACING SE.

photo shows the
north and west
sides of building

Photograph By:

CHARLES GRUNTMAN

Photo #: 1 Roll #: 91-65



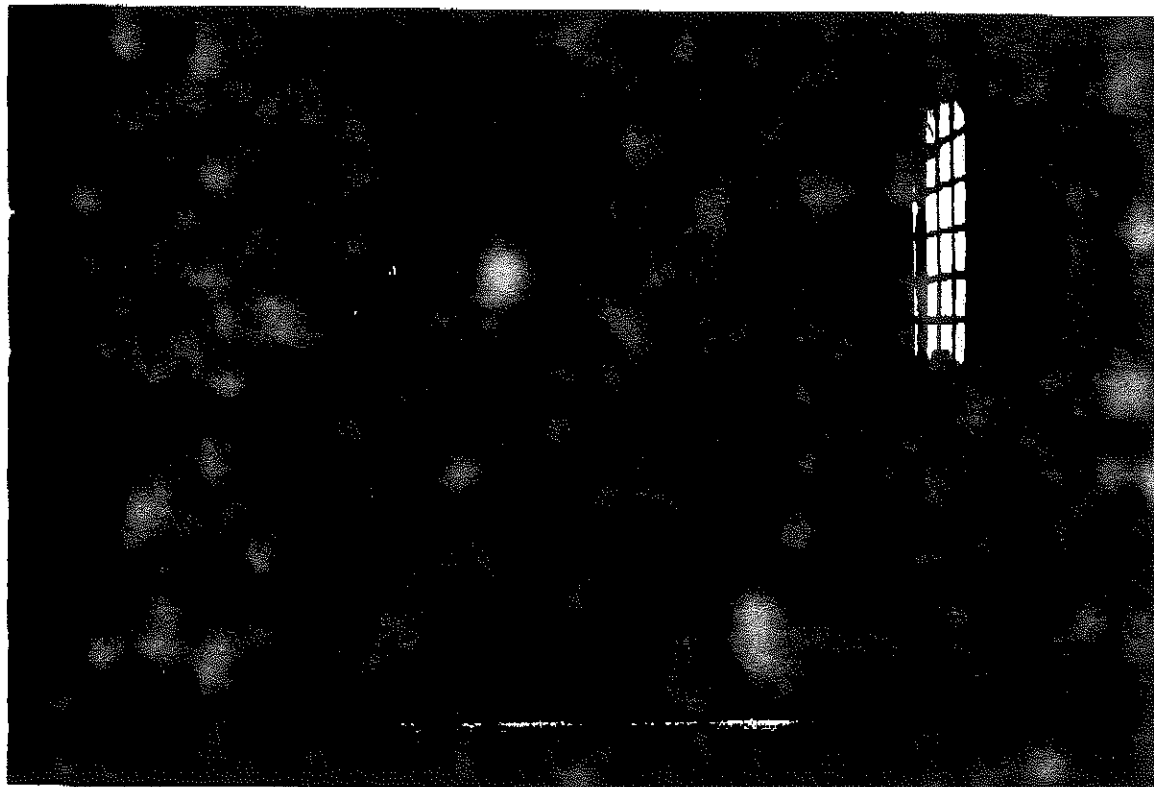
Comments: FACING W.

INSIDE 1860 - 1st
Floor, Riverwest
Lauren.

Photograph By:

CHARLES GRUNTMAN

Photo #: 2 Roll #: 91-65



Illinois Environmental
Protection Agency Photograph

at AUG. 23, 1990

time: 1:30 to 4:00 P

site name: Aero Plating works

file #: 0316230001

subjects: FACING SE.

side 1860 - 1st fl.

steel plate on floor

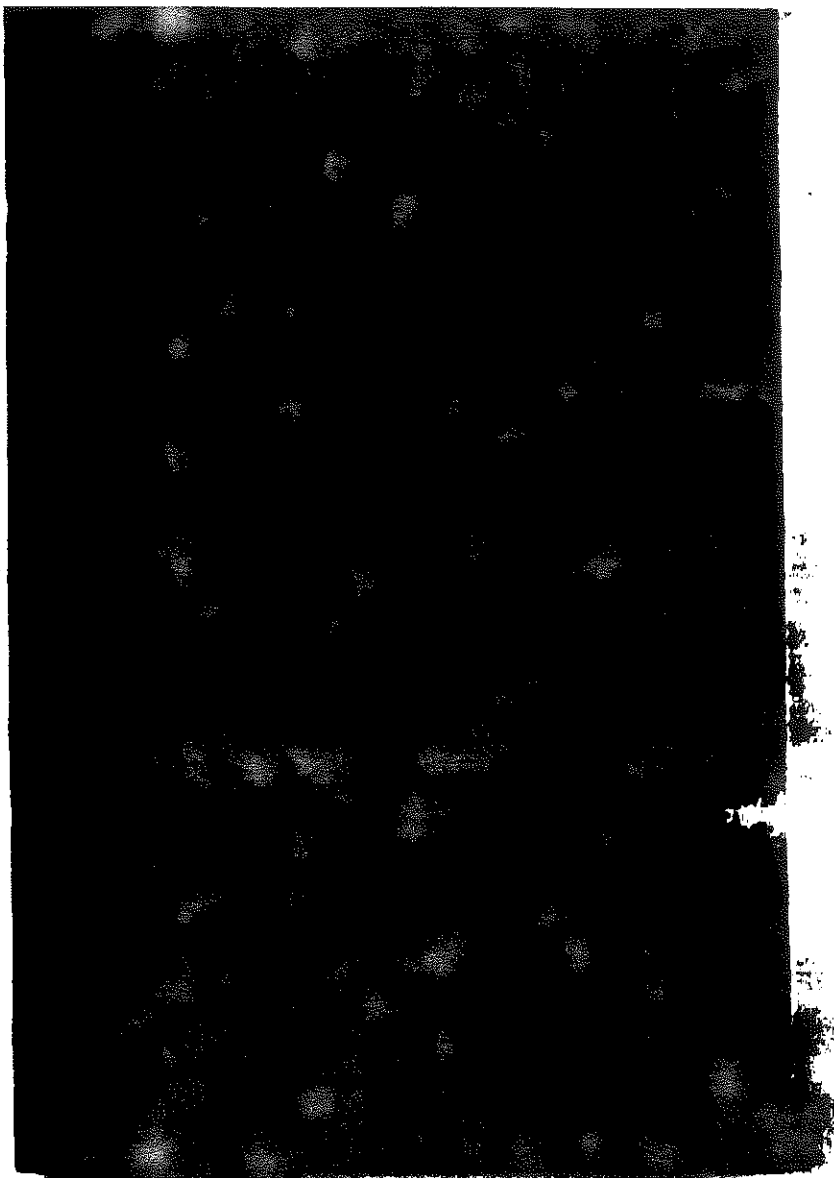
overs hole to

sement.

photograph BY:

CHARLES GRUNTMAN

photo #: 3 Roll #: 91-65



subjects: FACING W.

side 1860 - base

photograph By:

CHARLES GRUNTMAN

photo #: 4 Roll #: 91-65



WINDS ENVIRONMENTAL
Protection Agency Photographs

Date: AUG. 23, 1990

Time: 1:30 to 4:00 P

Site Name: AERO PLATING WORKS

Photo # 0310230001

Location: Facing E.

Side 1860 - Lateral

Last of photo #6

Photograph By:

CHARLES GRUNTHAN

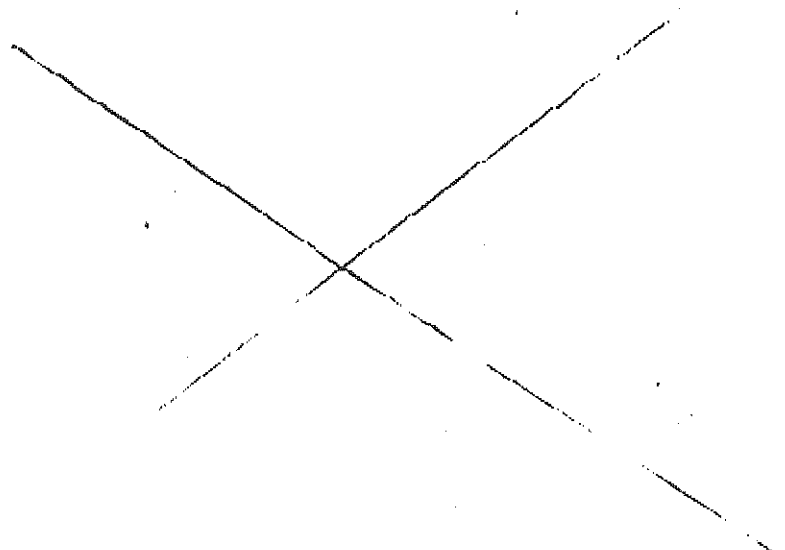
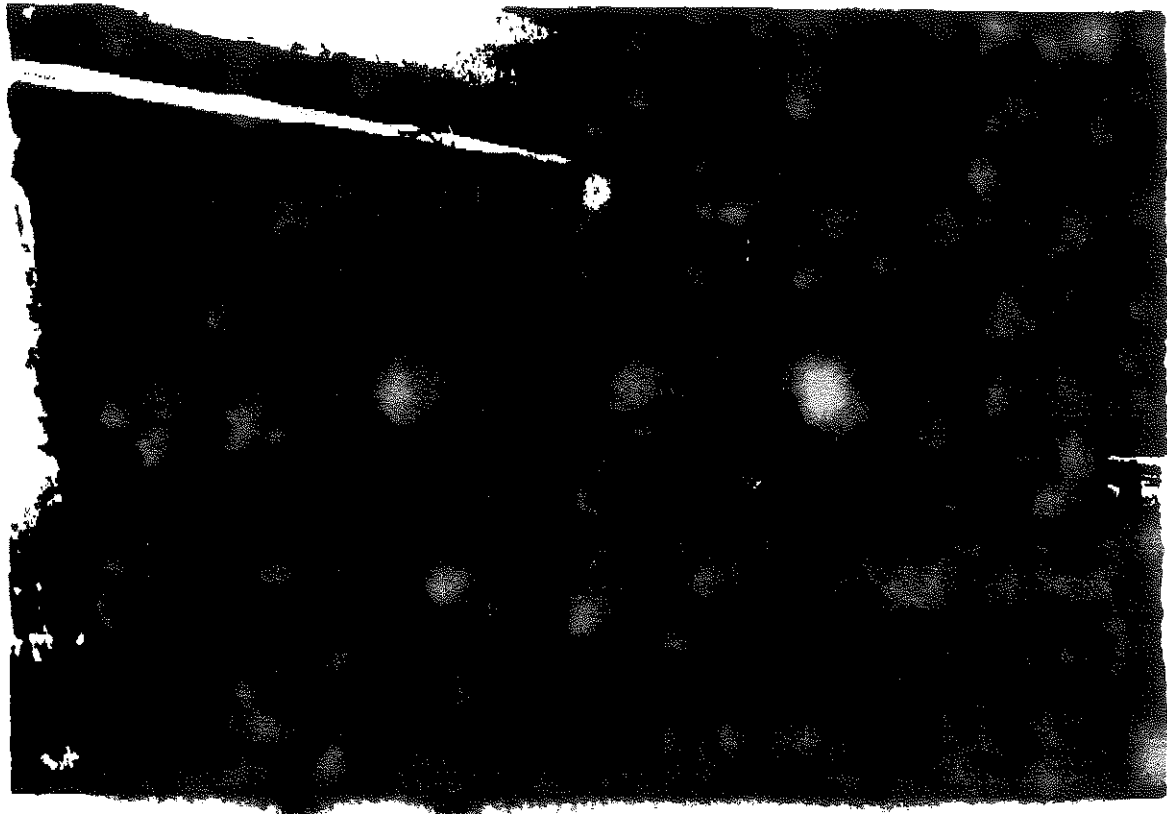
Photo #: 7 Roll #: 91-65

Notes:

Developed By:

CHARLES GRUNTHAN

Photo #: 91-65



Illinois Environmental
Protection Agency Photographs

Date: AUG. 23, 1990

Time: 1:30 TO 4:00 P

Site Name: Aero Plating works

Site # 0316230001

Comments: FACING E.

INSIDE 1360 - basement

Photograph By:

CHARLES GRUNTMAN

Photo #: 5 Roll #: 91-65



Comments: FACING E.

INSIDE 1360 -

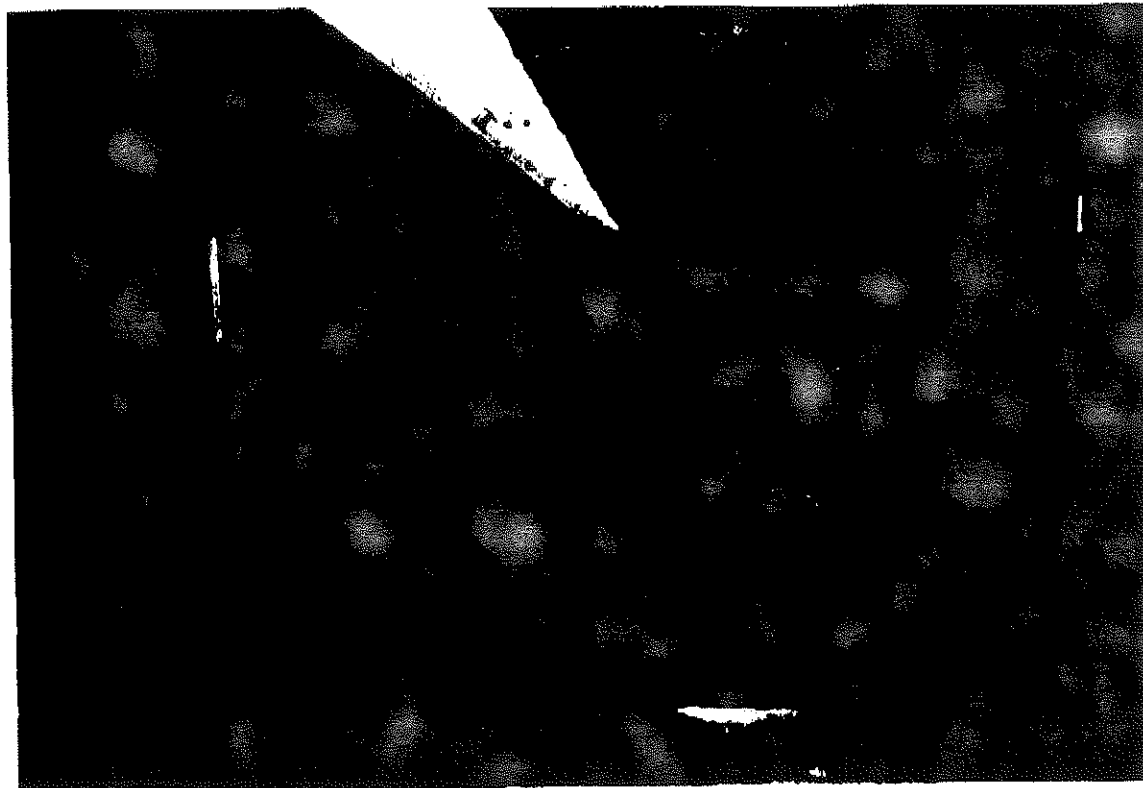
basement - East

of photo # 5

Photograph By:

CHARLES GRUNTMAN

Photo #: 6 Roll #: 91-65



Illinois Environmental

Protection Agency Photographs

DATE: AUG. 23, 1990

TIME: 1:30 to 4:00 P

SITE NAME: Aero Plating Works

ID #: 0316230001

ORIENT: FACING W.

ASIDE 1850.

GROUND DUST ON

LOOR AGAINST WEST

WALL

COPYRIGHT BY:

BY CHARLES GRUNTMAN

ROLL #: 8 ROLL #: 91-65



ORIENT: FACING W.

CLOSE UP OF BROWN

DUST SHOWN IN

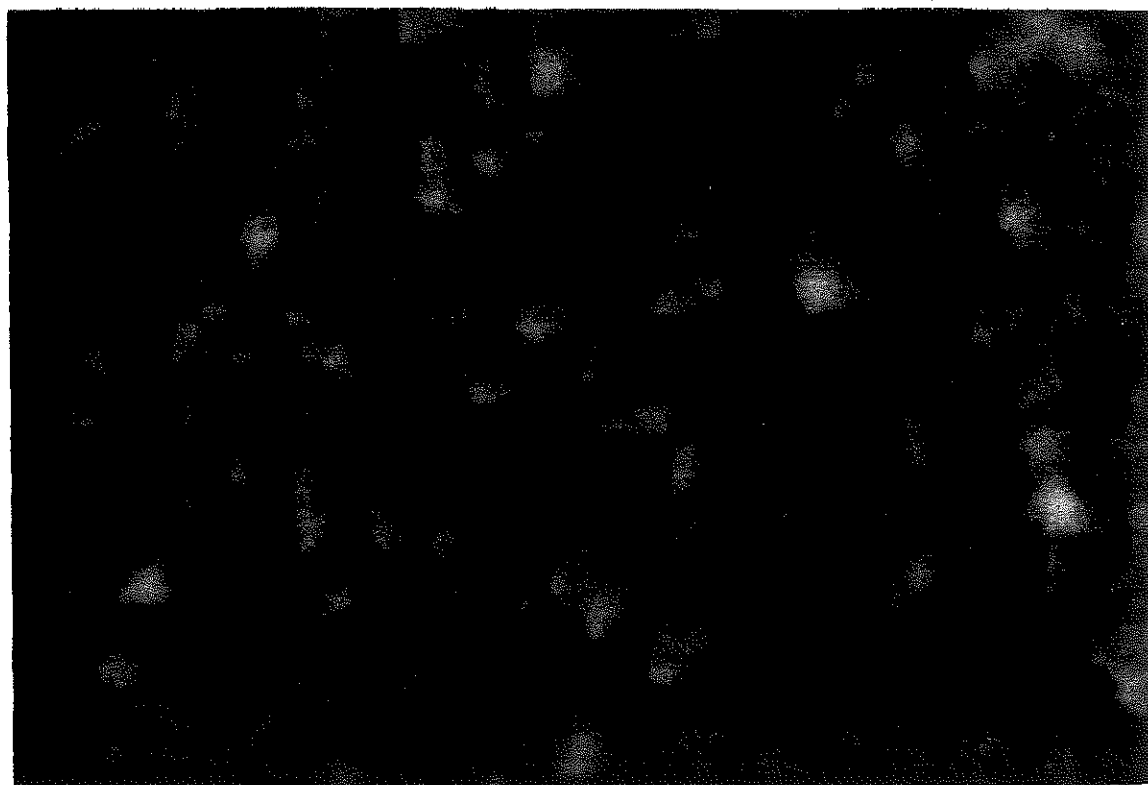
PHOTO #8.

INDUSTRIAL HEATING

COPYRIGHT BY:

BY CHARLES GRUNTMAN

ROLL #: 9 ROLL #: 91-65



Inside Environment
 Station Agency Photographs

ED. 100. 10. 1990

ED. 100. 10. 1990

NAME: Aero Plating works

ED. 100. 10. 1990

Notes: Facing W.

150. Overview

Side -

Incandescent light

Photograph By:

CHARLES GRUNTMAN

ED. 100. Roll #: 91-65



Notes: Facing NW.

150. 1850. - North

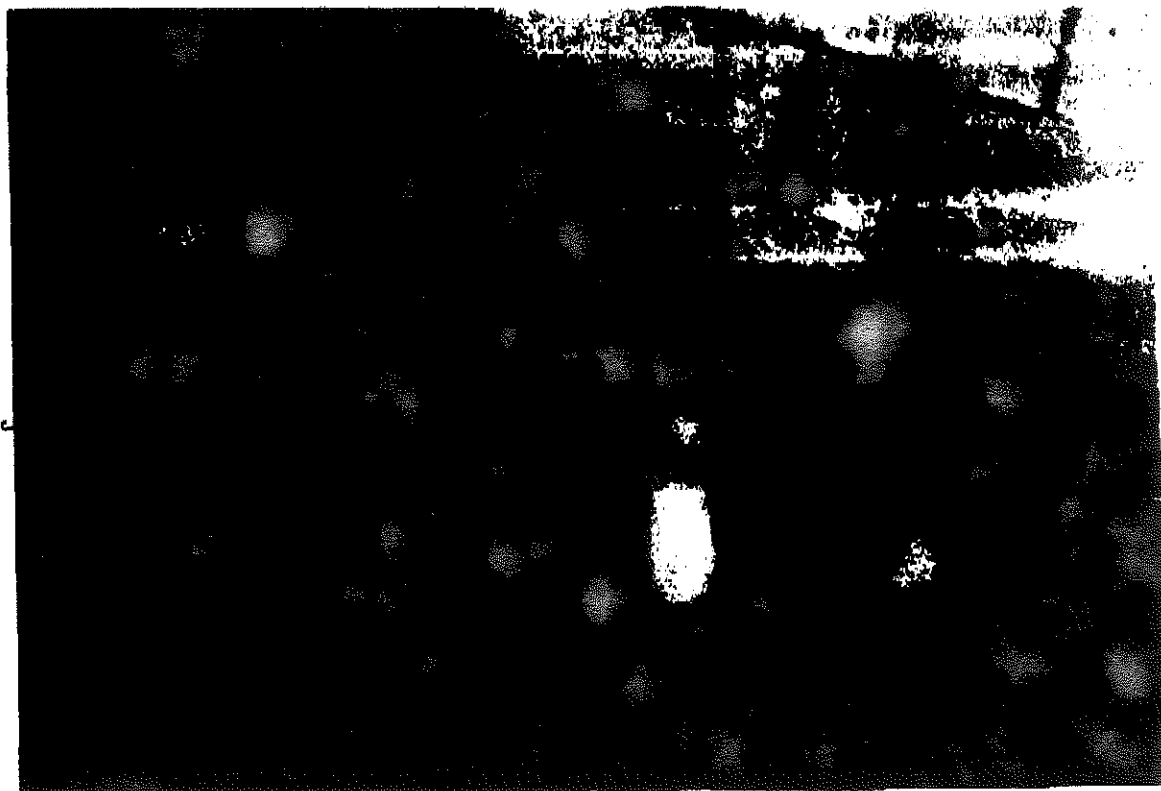
all. - Silica sand

above from sandblasting
 activity?

Photograph By:

CHARLES GRUNTMAN

ED. 100. Roll #: 91-65



CONVERSATION RECORD

TIME

3:30

DATE

8/27

TYPE

☐ VISIT

☐ CONFERENCE

☒ TELEPHONE

☐ INCOMING

☐ OUTGOING

Location of Visit/Conference:

NAME OF PERSON(S) CONTACTED OR IN CONTACT WITH YOU

Cliff Gould

Chuck Gristman

SUBJECT

Aero Plating

ORGANIZATION (Office, dept., bureau, etc.)

IEPA - Maywood

TELEPHONE NO:

(708)

345-9780

ROUTING

NAME/SYMBOL

INT

SUMMARY

Majorano's removed waste even b-t submitting closure plan. All that was req'd under the plan was verification of decontamination. ie - sampling & wipe tests; Chuck inspected area Carol (last inspection) could n't get into; Visually, cannot tell 1 way or other if closure was done; No cert'n in field office, IEPA Hdqtrs or IEPA permit assignee; (the usual practice is to copy cert'n to all). 2 other "Arrow?" facilities @ that time - will see if cert'n came in @ same time as the Aero Plating log was noted; Chuck will FAX report by Thursday; [No borings req'd under residual contamination; nothing physical to look for]

Rodger & Deb: If DOT are willing to go for it, why not? Rodger 9/12 wants me to send 3007 Infr. Reg. - 10 day turnaround

ACTION REQUIRED

NAME OF PERSON DOCUMENTING CONVERSATION

SIGNATURE

DATE

S. Murphy

8/28

ACTION TAKEN

CC: Ron Brown

SIGNATURE

TITLE

DATE



Illinois Environmental Protection Agency

1701 First Avenue, Maywood, IL 60153

708/345-9780

Refer to: 0316230001 - Cook County
Aero Plating Works
ILD005125836
Compliance File

August 29, 1990

Ms. Elizabeth Murphy
Assistant Regional Counsel
U.S. Environmental Protection Agency
230 So. Dearborn Street, 5C-16
Chicago, IL 60604

Re: Third Supplemental to Request for Compliance Order
Louis Maiorano, Jr., d/b/a Aero Plating Works
IEPA File 7038 HAZ

Dear Ms. Murphy:

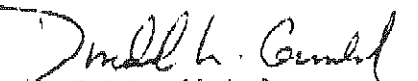
On February 23, 1984 this Agency requested the U.S. Environmental Protection Agency to issue a Compliance Order to Louis Maiorano, Jr., d/b/a Aero Plating Works. Since that time your office has prosecuted the case both administratively and before the U.S. District Court. Supplements to this referral were mailed to you on September 13, 1989 and January 8, 1990.

This letter further supplements the IEPA referral. A recent IEPA inspection on August 23, 1990 revealed Mr. Maiorano has still failed to complete closure activities at the site as required by 35 Ill. Adm. Code 725.215. This is the same violation that was referred on September 13, 1989 and January 8, 1990. The inspection report relating to this non-compliance is enclosed.

We request that you continue your enforcement action against Louis Maiorano, Jr. and Louis Maiorano, Sr. to seek compliance with this regulation now being violated.

Thank you for your service in this matter.

Sincerely,


Donald L. Gimbel
Assistant Counsel
Division of Legal Counsel

DLG:pgb:2013P

Enclosure

cc: Bill Muno, USEPA
Bill Radlinski
Scott Phillips
Division File
Maywood Region ✓

EPA Environmental NEWS RELEASE

United States
Environmental
Protection
Agency
Region V
230 S. Dearborn St.
Chicago, IL 60604



Legal Contact: Charles McKinley
(312) 886-4247
Technical Contact: Ronald Brown
(312) 886-4463
Media Contact: Suzanne Kircos
(312) 353-3209

For Immediate Release: February 5, 1990

No. 90-M012

AERO PLATING ORDERED TO PAY \$100,000 U.S. EPA FINE

U.S. Environmental Protection Agency (U.S. EPA) Region 5 today announced that Louis Maiorano Jr. and Louis Maiorano, Sr., former owners of Aero Plating Works which operated at 1860 N. Elston, Chicago, IL., have been fined \$100,000 for hazardous waste violations.

On January 8, 1990, District Court Judge Ilona Rovner entered an order that resolves a suit brought by the U.S. EPA against the Maioranos. The order requires the defendants to pay a \$100,000 penalty for failing to properly close the plant, which had generated hazardous wastes.

Specifically, the suit alleged that the defendants failed to submit an acceptable closure plan to the Illinois EPA on time as ordered to do so in 1986. The defendants were also fined because they failed to respond to U.S. EPA requests for information.

The Resource Conservation and Recovery Act requires facilities that generate, treat, store, or dispose of hazardous waste to comply with specific operating procedures.

This case originated with an administrative complaint and compliance order issued by U.S. EPA in September 1984.

###



Refer to: 0316230001 - Cook County
Aero Plating Works
ILD005125836
Compliance File

September 13, 1989

RECEIVED
SEP 15 1989
OFFICE OF RCRA
WASTE MANAGEMENT DIVISION
EPA, REGION V

Mr. Charles McKinley
Assistant Regional Counsel
U.S. Environmental Protection Agency
230 S. Dearborn Street, 5C-16
Chicago, Illinois 60604

Re: Supplement to Request for Compliance Order
Louis Maiorano, Jr., d/b/a Aero Plating Works
IEPA File 7038 HAZ

Dear Mr. McKinley:


On February 23, 1984 this Agency requested the U.S. Environmental Protection Agency to issue a Compliance Order to Louis Maiorano, Jr., d/b/a Aero Plating Works. Since that time your office has prosecuted the case both administratively and before the U.S. District Court.

This letter supplements the IEPA referral. Mr. Maiorano has failed to complete closure activities at the site as required by 35 Ill. Adm. Code 725.215. The documents relating to this non-compliance are enclosed.

We request that you continue your enforcement action against Louis Maiorano, Jr. and Louis Maiorano, Sr. to seek compliance with this regulation now being violated.

Thank you for your service in this matter.

Sincerely,


Donald L. Gimbel
Staff Attorney
Enforcement Programs

DLG:bh:4226B

cc: Bill Muno, USEPA
Lynn Peterson, USEPA
Bill Radlinski
Gary King

Division File
Maywood Region
Linda Cooper



217/782-6761

Refer to: 0316230001 -- Cook County
Aero Plating
ILD005125836
Compliance File

PRE-ENFORCEMENT CONFERENCE LETTER

Certified #

July 12, 1989

Louis J. Majorano, Jr.
422 Mill Valley
Palatine, Illinois 60067

Dear Mr. Majorano:

The Agency has previously informed Aero Plating of apparent violations of the Illinois Environmental Protection Act and/or rules and regulations adopted thereunder. These apparent violations are set forth in Attachment A of this letter.

As a result of these apparent violations, it is our intent to refer this matter to the Agency's legal staff for the preparation of a formal enforcement case. The Agency's legal staff will, in turn, refer this matter to the Office of Attorney General or to the United States Environmental Protection Agency for the filing of a formal complaint.

Prior to taking such action, however, you are requested to attend a Pre-Enforcement Conference to be held at the Illinois Environmental Protection Agency, Division of Land Pollution Control, 2200 Churchill Road, Springfield, Illinois. The purpose of this Conference will be:

1. To discuss the validity of the apparent violations noted by Agency staff, and
2. To arrive at a program to eliminate existing and/or future violations.

You should, therefore, bring such personnel and records to the conference as will enable a complete discussion of the above items. We have scheduled the Conference for Thursday, July 27, 1989, at 1:00 p.m. If this arrangement is inconvenient, please contact Mark Schollenberger at 217/782-6762 to arrange for an alternative date and time.

In addition, please be advised that this letter constitutes the notice required by Section 31(d) of the Illinois Environmental Protection Act prior to the filing of a formal complaint. The cited Section of the Illinois



Page 2

Environmental Protection Act requires the Agency to inform you of the charges which are to be alleged and offer you the opportunity to meet with appropriate officials within thirty days of this notice date in an effort to resolve such conflict which could lead to the filing of formal action.

Sincerely,

Harry A. Chappel
HAC

Harry A. Chappel, P.E., Manager
Compliance Section
Division of Land Pollution Control

HAC:BW:dls/2406k,63-64

Attachment

cc: Division File
Maywood Region
Mark Schollenberger
Brian White



Attachment A

1. Pursuant to 35 Ill. Adm. Code 725.215, when closure is completed, the owner or operator must submit to the Director certification both by the owner or operator and by an independent registered professional engineer that the facility has been closed in accordance with the specifications in the approved closure plan. You are in apparent violation of this Section for the following reason(s): Item 1 of the closure plan approved July 25, 1988 required closure activities to be completed by November 22, 1988. The certification that the facility had been closed in accordance with the approved closure plan was to be received at this Agency within 60 days after closure, or by January 21, 1989. As of the date of this letter, the Agency has not received a certification of closure from the above referenced facility.

AAT:BW:dls/2406k,65



217/782-6761

Refer to: 0316230001 -- Cook County
Aero Plating
ILD005125836
Compliance File

COMPLIANCE INQUIRY LETTER

Certified #

May 22, 1989

Louis J. Maiorano, Jr.
422 Mill Valley
Palatine, Illinois 60067

Dear Mr. Maiorano:

The purpose of this letter is to address the status of the above-referenced facility in relation to the requirements of 35 Ill. Adm. Code, Part 725 and to inquire as to your position with respect to the apparent violations identified in Attachment A and your plans to correct these apparent violations. The Agency's findings of apparent non-compliance in Attachment A are based on a April 26, 1989 review of documents submitted to the Agency to demonstrate compliance with the requirements of Subpart G.

Please submit in writing, within fifteen (15) calendar days of the date of this letter, the reasons for the identified violations, a description of the steps which have been taken to correct the violations and a schedule, including dates, by which each violation will be resolved. The written response, and two copies of all documents submitted in reply to this letter, should be sent to the following:

Angela Aye Tin, Manager
Technical Compliance Unit
Compliance Section
Illinois Environmental Protection Agency
Division of Land Pollution Control
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794-9276

Further, take notice that non-compliance with the requirements of the Illinois Environmental Protection Act and rules and regulations adopted thereunder may be the subject of enforcement action pursuant to either the Illinois Environmental Protection Act, Ill. Rev. Stat., Ch. 111 1/2, Sec. 1001 et seq. or the federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sec. 6901 et seq.



Page 2

If you have any questions regarding the above, please contact Mark Schollenberger at 217/782-6762.

Sincerely,

Angela Aye Tin

Angela Aye Tin, Manager
Technical Compliance Unit
Compliance Section
Division of Land Pollution Control

AAT:BW:jd/1821k,49-50

cc: Division File
Maywood Region
Mark Schollenberger
Brian White
Mary Murphy-USEPA



Attachment A

1. Pursuant to 35 Ill. Adm. Code 725.215, when closure is completed, the owner or operator must submit to the Director certification both by the owner or operator and by an independent registered professional engineer that the facility has been closed in accordance with the specifications in the approved closure plan. You are in apparent violation of this Section for the following reason(s): Item 1 of the closure plan approved July 25, 1988 required closure activities to be completed by November 22, 1988. The certification that the facility had been closed in accordance with the approved closure plan was to be received at this Agency within 60 days after closure, or by January 21, 1989. As of the date of this letter, the Agency has not received a certification of closure from the above referenced facility.

AAT:BW:jd/1821k,51

USEPA



Illinois Environmental Protection Agency

P. O. Box 19276, Springfield, IL 62794-9276

217/782-6761

Refer to: 0316230001 -- Cook County
Aero Plating
IL0005125836
Compliance File

COMPLIANCE INQUIRY LETTER

Certified # *PL 10000000*

May 27, 1985

Louis J. Maiorano, Jr.
422 Hill Valley
Palatine, Illinois 60067

Dear Mr. Maiorano:

The purpose of this letter is to address the status of the above-referenced facility in relation to the requirements of 35 Ill. Adm. Code, Part 725 and to inquire as to your position with respect to the apparent violations identified in Attachment A and your plans to correct these apparent violations. The Agency's findings of apparent non-compliance in Attachment A are based on a April 26, 1985 review of documents submitted to the Agency to demonstrate compliance with the requirements of Subpart E.

Please submit in writing, within fifteen (15) calendar days of the date of this letter, the reasons for the identified violations, a description of the steps which have been taken to correct the violations and a schedule, including dates, by which each violation will be resolved. The written response, and two copies of all documents submitted in reply to this letter, should be sent to the following:

Angela Aye Tin, Manager
Technical Compliance Unit
Compliance Section
Illinois Environmental Protection Agency
Division of Land Pollution Control
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794-9276

Further, take notice that non-compliance with the requirements of the Illinois Environmental Protection Act and rules and regulations adopted thereunder may be the subject of enforcement action pursuant to either the Illinois Environmental Protection Act, Ill. Rev. Stat., Ch. 111 1/2, Sec. 1001 et seq., or the federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sec. 6901 et seq.



Page 2

If you have any questions regarding the above, please contact Mark Schollenberger at 217/782-6762.

Sincerely,

Angela Aye Tin, Manager
Technical Compliance Unit
Compliance Section
Division of Land Pollution Control

AAT:BN:jc/1821k, 45-50

cc: Division File
Maywood Region
Mark Schollenberger
Brien White
Mary Murphy-USEPA



Attachment A

1. Pursuant to 35 Ill. Adm. Code 725.215, when closure is completed, the owner or operator must submit to the Director certification both by the owner or operator and by an independent registered professional engineer that the facility has been closed in accordance with the specifications in the approved closure plan. You are in apparent violation of this Section for the following reason(s): Item 1 of the closure plan approved July 25, 1988 required closure activities to be completed by November 22, 1988. The certification that the facility had been closed in accordance with the approved closure plan was to be received at this Agency within 60 days after closure, or by January 21, 1989. As of the date of this letter, the Agency has not received a certification of closure from the above referenced facility.

AAT:BN:jd/1827k.51



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

FEB 10 1988

Bertram Stone
Stone, Pogrund, Korey & Spagat
28th Floor
221 North LaSalle Street
Chicago, Illinois 60601

REPLY TO THE ATTENTION OF:
RECEIVED
FEB 11 1988

U.S. EPA, REGION V
WASTE MANAGEMENT DIVISION
OFFICE OF THE DIRECTOR

Re: Aero Plating Works

Dear Mr. Stone:

Thank you for your letter of January 22, 1988 and the documents enclosed therewith. The substance of the letters, I believe, is adequate to alert the addressees of the potential health danger. Though I have no direct information as to how many separate businesses or persons occupy the premises where Aero Plating once operated, it has been my understanding that there were more than just the two to whom you have written. I request, therefore, that you ascertain the precise area in which Aero operated and the names of all entities occupying said premises.

I understand that as of January 28, 1988 you had not yet arranged a site meeting for the purpose of the activities specified in paragraph 7d of the Judgment Order. Cliff Gould of Illinois EPA prefers that you have your client's consulting engineers contact him directly for this purpose. I suggest that you arrange this immediately. If the obligations of paragraph 7d have not been fully performed by February 16, 1988 it will be necessary to proceed with the motion for contempt, which Ann Wallace discussed with you.

No payments, nor arrangement for payments, have been made by your clients toward satisfaction of the amounts they owe under the Judgment Order. Nor have we had any response to our offer of November 17, 1987 to settle the reserved issue of civil penalties. If there has been no significant progress on these issues by February 16, please advise your clients that they should expect to receive a Citation to Discover Assets shortly thereafter.

Very truly yours,


Charles McKinley
Assistant Regional Counsel

-2-

cc: Ann Wallace
Anna Swerdel



217/782-6762

Refer to: 0316230001 -- Cook County
Aero Plating
ILD005125836
Compliance File

COMPLIANCE INQUIRY LETTER

Certified #. *P245752375*

February 3, 1988

Mr. Louis J. Maiorana, Jr.
422 Melvina
Palatine, IL 60067

Mr. Louis J. Maiorana, Sr.
1215 Sanders Road
Deerfield, IL 60015

Gentlemen:

The purpose of this letter is to address the status of the above-referenced facility in relation to the requirements of 35 Ill. Adm. Code, Part 725 and to inquire as to your position with respect to the apparent violations identified in Attachment A and your plans to correct these apparent violations. The Agency's findings of apparent non-compliance listed in Attachment A are based on a January 26, 1988 review of documents submitted to the Agency to demonstrate compliance with the requirements of 35 Ill. Adm. Code, Part 725, Subpart G.

Please resubmit for approval within fifteen (15) calendar days of the date of this letter your closure plan. This document should be sent to the following:

Angela Aye Tin, Manager
Technical Compliance Unit
Compliance Section
Illinois Environmental Protection Agency
Division of Land Pollution Control
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794-9276

Until your facility is formally closed, you remain subject to all applicable requirements of 35 Ill. Adm. Code, Part 725, Subpart H.

Further, take notice that non-compliance with the requirements of the Illinois Environmental Protection Act and rules and regulations adopted thereunder may be the subject of enforcement action pursuant to either the Illinois Environmental Protection Act, Ill. Rev. Stat., Ch. 111 1/2, Sec. 1001 et seq. or the federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sec. 6901 et seq.



Page 2

If you have any questions regarding the above, please contact Mark A. Schollenberger at 217/782-9799.

Sincerely,

Angela Aye Tin

Angela Aye Tin, Manager
Technical Compliance Unit
Compliance Section
Division of Land Pollution Control

AAT:MAS:tf/0208j,83-84

cc: Division File
Northern Region - Clifford Gould
Ruth Allen
USEPA -- Mary Murphy ✓
Compliance Monitoring Section
Stone, Poggrund, Korey & Spagat
Louis J. Maiorana, Sr.

ATTACHMENT A

1. You are in apparent violation of 35 Ill. Adm. Code 725.212(a) for the following reason: The deficiencies cited in the attached letter have not been addressed. Pursuant to 35 Ill. Adm. Code 725.212(d), within 30 days of disapproval of a closure plan, the owner or operator must either modify a previously submitted plan or submit a new plan.



Illinois Environmental Protection Agency · 2200 Churchill Road, Springfield, IL 62706

217/782-6762

Refer to: 0316230001 -- Cook County
Aero Plating
ILD005125836
RCRA General

December 11, 1987

Karl E. Bremer, Chief
Technical Program Section
U.S. Environmental Protection Agency
Region V
230 South Dearborn
Chicago, Illinois 60604

Dear Mr. Bremer:

Enclosed you will find the following:

1. The Initial Screening for Environmental Significance form for the above referenced facility.

The following form(s) were not on file at the IEPA for this facility:

2. Notification of Hazardous Waste Site (EPA Form 8900-1).
3. Preliminary Assessment (EPA Form 2070-12).
4. A response to IEPA's request for information regarding Potential Releases from Solid Waste Management Units.

Based upon a review of the information available on the above referenced facility, the Agency has determined that this facility is not environmentally significant and that a Facility Management Plan should not be prepared. Please let us know if you do not agree with this determination.

RECEIVED

DEC 21 1987

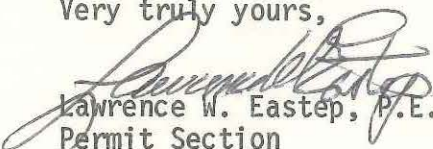
SOLID WASTE BRANCH
U.S. EPA, REGION V



Page 2

If you have any questions regarding this initial screening, please contact Mark A. Schollenberger of my staff at 217/782-6762.

Very truly yours,


Lawrence W. Eastep, P.E., Manager
Permit Section
Division of Land Pollution Control

LWE:MAS:s1s/4391g,105-106

Enclosure

cc: Division File
Northern Region - Cliff Gould
USEPA Region V - Ann Budich

→ Ron Brown - FCI Ongoing civil case for CAFE viol^{ns}.

WEM
10-26-87

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

DATE: OCT 26 1987

SUBJECT: Aero-Plating Works, Inc.
1860 Elston Avenue, Chicago, Illinois 60622

FROM: James N. Mayka, Chief
Illinois Permitting Section (5HS-13)

TO: Charles McKinley
Office of Regional Counsel (5C-TUB)

Per your request, I have performed a brief review of the October 14, 1987, "Closure and Post Closure Plan" for the above-referenced facility. As you know, the Illinois Environmental Protection Agency (IEPA) is the authorized entity to review and approve closure plans in the State of Illinois. However, I am providing you with comments based on my previous experience reviewing closure plans, and on my knowledge of IEPA's current closure plan review process.

From the facility description, it appears that all hazardous waste management activities occurred entirely within a building, on a concrete floor. Assuming the concrete floor was free of major cracks and free of any floor drains that did not lead to the sanitary sewer system, closure would primarily be concerned with (1) proper removal and disposal of all hazardous wastes, and (2) proper removal and disposal of, or decontamination of, all contaminated structures, equipment, walls and flooring.

It appears that 49 drums of hazardous waste materials were manifested to Chemical Waste Management, Inc. in Emelle, Alabama. It appears that IEPA personnel performed independent sampling and analysis of the waste materials, and of the plating solutions that were to be sold for reuse. It also appears that efforts were made to decontaminate equipment, walls and floors. In the plan, Aero Plating further agrees that wall and floor scrapings will be taken and analyzed to ensure that no residual contamination exists.

The actions described above are generally consistent with an approvable closure plan for a hazardous waste activity conducted entirely within a building. However, IEPA would normally insist that each and every planned closure activity be explained in much greater detail. Since much of the "closure" activity has already occurred at Aero Plating, I believe IEPA would insist on the submission of a formal Closure Documentation Report, which would include (at a minimum):

- A. The volume of waste and waste residue removed.
- B. A description of the method of waste handling and transport.
- C. The waste manifest numbers.
- D. Copies of the waste manifests.

- E. A description of the sampling and analytical methods used.
- F. A chronological summary of closure activities.
- G. Photo documentation of closure.
- H. Tests performed, methods and results.

The Report would also have to include a Closure Certification Statement, signed by both the owner/operator and a registered professional engineer (see Attachment). In addition, IEPA would insist that financial assurance for closure be maintained until IEPA approves the Closure Certification Statement.

If an IEPA inspection prior to, during, or after closure activities determined that hazardous waste could have migrated into soils beneath the building, IEPA could also require soil sampling, and cleanup, if necessary. This would normally occur if there were major cracks in the concrete floor, if floor drain pipes appeared cracked or otherwise dysfunctional, or if telltale stains were observed outside of the building.

Please note also that the name "Lynn Crivello" appears on each of the IEPA sampling sheets. As Ms. Crivello is now a U.S. EPA employee in our Water Division, she may be able to provide you with some insight on the condition of Aero-Plating's building, or on the conduct of the company's closure activities.

If I can be of any further assistance, please call me at 6-0987.

Attachment

✓cc: Bill Muno

SHS:J.MAYKA:fm:10/26/87

Illinois Unit Disc #3



ATTACHMENT

This statement is to be completed by both the responsible officer and by the registered professional engineer upon completion of closure. Submit one copy of the certification with original signatures and three additional copies.

Closure Certification Statement

The hazardous waste management unit (S01) at the facility described in this document has been closed in accordance with the specifications in the approved closure plan. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

USEPA ID Number

Facility Name

Signature of Owner/Operator

Name and Title

Signature of Registered P.E.

Name of Registered P.E. and
Registration Number

Date

WKE:pmd3164g/63



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

80 JUL 1987

MEMORANDUM

TO: Jim Rittenhouse
Environmental Protection Specialist

FROM: Ellen Carpenter *ec*
Assistant Regional Counsel

RE: United States v. Louis Maiorano, Sr., et al.

The attached letter is from the Department of Justice requesting a file review to determine the nature and quantity of hazardous wastes at the Maioranos' facility in the early part of 1986.

This information is needed to track the Maioranos' documentation, to be submitted, in support of their claim that the hazardous wastes at the facility were properly transported and disposed of.

Please prepare a response to the attached letter in memo form identifying the nature and quantity of hazardous wastes at the facility and the supporting documentation.

Attachment

cc: T. Daggett



DTB:AS:tmd
90-7-1-374

Washington, D.C. 20530

July 20, 1987

Ellen Carpenter, Esq.
U.S. Environmental Protection Agency
Region V
Office of Regional Counsel
230 S. Dearborn Street
Chicago, Illinois 60604

Re: United States v. Louis Maiorano, Sr. et al.

Dear Ellen:

As you know, on July 14, 1987 during our pre-trial conference, Judge Rovner ordered the defendants in this case to submit to U.S. EPA a closure plan and all manifests, shipping documents, and other off-site disposal documents relating to the hazardous waste that was generated and stored at the defendants' Aero Plating Works, Inc. facility. Judge Rovner gave the defendants 90 days to complete this task.

During our conversation on July 17, you and I discussed the need to determine if we have in U.S. EPA's files or if Illinois EPA has information identifying the nature and quantity of hazardous waste remaining at the site as of the ALJ's order requiring closure of the facility. I request that you ask the technical personnel assigned to this matter to make such a search and to make the appropriate inquiry of Illinois EPA in order to make this determination. To the extent we have this information, our analysis of the information the defendants submit to U.S. EPA to determine the adequacy of their closure plan and disposal activities will be that much more complete and easier.

Thank you for your cooperation in this matter.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

Anna Swerdel

Anna Swerdel, Attorney
Environmental Enforcement Section

cc: Joel Gross, DOJ
Tom Daggett, EPA Region V



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

5CS-16

03 FEB 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Louis J. Maiorano, Jr.
422 Melvina
Palatine, Illinois 60067

Mr. Louis J. Maiorano, Sr.
1215 Sanders Road
Deerfield, Illinois 60015

Re: Section 3007 Information Request
Louis J. Maiorano, Sr.,
Louis J. Maiorano, Jr.,
d/b/a Aero Plating Works
Docket No. V-W-84-R-071
ILD 005 125 836

Dear Mr. Maiorano:

This is a request for information by the United States Environmental Protection Agency (U.S. EPA) pursuant to its authority under Section 3007 of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. §6927. The information requested relates to the closure of the Maioranos' electroplating operation and compliance with manifest and shipping regulations.

The information requested by this letter is necessary to determine the compliance status of the hazardous waste facility formerly operated by the Maioranos as Aero Plating Works and located at 1860 N. Elston Avenue, Chicago, Illinois, with 40 CFR Part 265, Subpart G and 35 III. Adm. Code Part 725, and the manifest and shipping requirements of 40 CFR part 262 and 35 III. Adm. Code 722.120(a), 722.130, 722.131, 722.132(b), and 722.133.

The information requested herein must be provided to this Office within seven (7) days of receipt of this letter, notwithstanding its possible characterization as confidential information. You may, however, assert a business confidentiality claim covering all or part of the information in the manner described in 40 CFR 2.203(b). Information covered by such a claim will be disclosed by U.S. EPA only to the extent and by means of the procedures set forth in 40 CFR Part 2, Subpart B. Any request for confidentiality must be made when the information is submitted, since any information not so identified may be made available to the public without further notice.

The written statements submitted pursuant to this request must be notarized and submitted under an authorized signature certifying that all statements contained therein are true and accurate to the best of the signatory's knowledge and belief. Any documents submitted to Region V pursuant to this information request should be certified as true and authentic to the best of the signatory's knowledge or belief. Should the signatory find, at any time after the submittal of the requested information, that any portion of the submitted information is false or misleading, the signatory should so notify Region V. If any answer certified as true should be found to be untrue or misleading, the signatory can and may be prosecuted pursuant to 18 U.S.C. §1001.

If you have any questions regarding this matter, please contact Mr. Oliver Warnsley, RCRA Enforcement Section, at (312) 886-6533. Your response should be sent to the United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Sincerely,

M. G. Constantelos

Basil G. Constantelos, Director
Waste Management Division

Enclosure

cc: Bertram A. Stone
Stone, Pergrund & Kore
221 North LaSalle Street
28th Floor
Chicago, Illinois 60601

Gary King, IEPA-Enforcement

Glenn Savage, IEPA-FOS, DLPC

Harry Chappel, IEPA-CMS, DLPC.

03 FEB 1987

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Louis J. Maiorano, Jr.
422 Melvina
Palatine, Illinois 60067

Mr. Louis J. Maiorano, Sr.
1215 Sanders Road
Deerfield, Illinois 60015

Re: Section 3007 Information Request
Louis J. Maiorano, Sr.,
Louis J. Maiorano, Jr.,
d/b/a Aero Plating Works
Docket No. V-M-84-R-071
ILD 005 125 836

Dear Mr. Maiorano:

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P 611 586 958

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

Sent to	Louis J. Maiorano
Street and No.	422 Melvina
P.O., State and ZIP Code	Palatine, Illinois 60067
Postage	\$.39
Certified Fee	75
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	70
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ 1.84
Postmark or Date	

PS Form 3800, Feb. 1982

O. Warnsley, USEPA, 230 S. Dearborn, Chicago, IL 60604

P 611 586 959

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

Sent to	Luis J. Maiorano, Sr.
Street and No.	1215 Sanders Road
P.O., State and ZIP Code	Deerfield, Illinois 60015
Postage	\$.39
Certified Fee	75
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	70
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ 1.84
Postmark or Date	

PS Form 3800, Feb. 1982

O. Warnsley, USEPA, 230 S. Dearborn, Chicago, IL 60604

The written statements submitted pursuant to this request must be notarized and submitted under an authorized signature certifying that all statements contained therein are true and accurate to the best of the signatory's knowledge and belief. Any documents submitted to Region V pursuant to this information request should be certified as true and authentic to the best of the signatory's knowledge or belief. Should the signatory find, at any time after the submittal of the requested information, that any portion of the submitted information is false or misleading, the signatory should so notify Region V. If any answer certified as true should be found to be untrue or misleading, the signatory can and may be prosecuted pursuant to 18 U.S.C. §1001.

If you have any questions regarding this matter, please contact Mr. Oliver Warnsley, RCRA Enforcement Section, at (312) 886-6533. Your response should be sent to the United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Sincerely,

Basil G. Constantelos, Director
Waste Management Division

Enclosure

cc: Bertram A. Stone
Stone, Pergrund & Kore
221 North LaSalle Street
28th Floor
Chicago, Illinois 60601

Gary King, IEPA-Enforcement

Glenn Savage, IEPA-FOS, DLPC

Harry Chappel, IEPA-CMS, DLPC

bcc: Ellen Carpenter
Oliver Warnsley, WMD, RES, 5HE-12

E. Carpenter:dn/disk#2/1-12-87

dw
2/2/87

AK
2/2/87

AK for WEM
2/2/87

WMD
2/2/87

cc
2/3/87

CL
2/2/87

2/2/87

2/2/87

mb 5 WMD
2/3/87

2/3/87

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

LOUIS J. MAIORANO, SR.,	)	INFORMATION REQUEST PURSUANT
LOUIS J. MAIORANO, JR.,	)	TO SECTION 3007 OF THE RESOURCE
d/b/a AERO PLATING WORKS	)	CONSERVATION AND RECOVERY ACT,
1860 N. ELSTON AVENUE	)	AS AMENDED, 42 U.S.C. §6927
CHICAGO, ILLINOIS 60622)	
EPA I.D. NO.: ILD 005 125 836)	

This is a request by the United States Environmental Protection Agency (U.S. EPA) issued pursuant to Section 3007 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6927. The issuance of this request requires the Maioranos to submit information relating to their electroplating operation.

I. INSTRUCTIONS

This request for information pertains to information you have regarding the hazardous wastes which have been transported and disposed of since July 31, 1985, from or at the Maioranos' hazardous waste facility located at 1860 N. Elston Avenue, Chicago, Illinois. If any information called for herein is not available or accessible in the full detail requested, the document shall be deemed to call for the best information available. It also requires the production of all information called for in as detailed a manner as possible based upon such information as is available or accessible, including, where specific information is not available or accessible, an estimate and an explanation of the method by which each estimate is made. The information must be provided notwithstanding its possible characterization as confidential information or trade secrets. You are entitled to assert a claim of confidentiality pursuant to 40 CFR 2.203(b) for any information produced that, if disclosed to persons other than officers, employees, or duly authorized representatives of the United States, would divulge information

entitled to protection as trade secrets. Any information which the Administrator of this Agency determines to constitute methods, processes or other business information entitled to protection as trade secrets will be maintained as confidential pursuant to the procedures set forth in 40 CFR Part 2. A request for confidential treatment must be made when information is provided since any information not so identified will not be accorded this protection by the Agency.

The written statements submitted pursuant to this request must be notarized and returned under an authorized signature certifying that all statements contained therein are true and accurate to the best of the signatory's knowledge and belief. Should the signatory find at any time after submittal of the requested information that any portion of this submittal certified as true is false or misleading, the signatory should so notify U.S. EPA.

If any information submitted under this information request is found to be untrue or misleading, the signatory can be prosecuted under Section 1001 of Title 18 of the United States Code.

The information requested herein must be provided within seven (7) days following receipt of this request to the United States Environmental Protection Agency, Region V, RCRA Enforcement Section, 230 South Dearborn Street, Chicago, Illinois 60604.


II. DEFINITIONS

1. "Hazardous waste" means a hazardous waste as defined in 40 CFR 261.3. (40 CFR 260.10)
2. The term "manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage. (40 CFR 260.10)

III. REQUEST FOR ANSWERS TO QUESTIONS AND
THE PRODUCTION OF DOCUMENTS

1. Identify the name, address, and location of the facility or facilities to which the hazardous wastes generated at the Elston Avenue facility were transported and where any such wastes have been disposed of since July 31, 1985, and identify the type of disposal used (i.e., burial, incineration, etc.).
2. Provide copies of all manifests, shipping documents or other business documents relating to the transportation and disposal of hazardous wastes from or at the Elston Avenue facility.

Issued this 3rd day of February, 1987



Basil G. Constantelos, Director
Waste Management Division
United States Environmental Protection Agency
Region V

OFFICE OF REGIONAL COUNSEL TRANSMITTAL SHEET

I. OFFICE OF REGIONAL COUNSEL

	(LIST NAME)	(CHECK AND DATE COMPLETED)
TO: Assigned Attorney	(Carpenter)	EC 2-2-87
Section Chief	(Doggott)	TD 2/2/87
Branch Chief	(Elam)	ly 2/2/87
Deputy Reg. Counsel	(Ulrich)	✓ 2/2/87
Regional Counsel	(SCHAEFER)	✓ 2/2/87

II. OTHER DIVISIONS

TO: <input type="checkbox"/> Air Management Division	<input type="checkbox"/> Water Division
<input type="checkbox"/> Environmental Services Division	<input type="checkbox"/> Office of Public Affairs
<input type="checkbox"/> Planning & Management Division	<input type="checkbox"/> Great Lakes National Program Office
<input type="checkbox"/> Waste Management Division	<input type="checkbox"/> Other

Ellen
67949

	(LIST NAME)	(CHECK AND DATE COMPLETED)
TO: Assigned Staff Person	(Wamsley)	Ohw 2-2-87
Unit Chief	(Kolzew)	RK 2-2-87
Section Chief	(Muno)	RK for WEA 2/2/87
Branch Chief	(miner)	✓ 2/2/87
Deputy	(Gade)	
Division Director	(Constantinos)	✓ 2/3/87

III. OFFICE OF REGIONAL ADMINISTRATOR ☐

TO: Deputy Regional Administrator (Levin) _____
Regional Administrator (Adamkus) _____

IV. RETURN TO OFFICE OF REGIONAL COUNSEL ☐

TO: Regional Counsel's Secretary (Klebenow, Cheryl) 886-6771

NOTE: THIS SHEET SHOULD BE USED FOR TRANSMITTAL OF CORRESPONDENCE FOR INITIALLING AND/OR SIGNATURE WITHIN OUR OFFICE AND TO OTHER OFFICES. DO NOT USE THIS AS A CONCURRENCE SHEET, BUT PUT A CHECK MARK AFTER CORRESPONDENCE IS REVIEWED AND THE DATE. PLEASE PUT AN "x" IN THE BOX FOR THE APPROPRIATE DIVISION OR OFFICE AND ENTER THE NAMES OF THE PEOPLE WHO MUST INITIAL OR SIGN IF KNOWN. IF CIRCULATION IS JUST WITHIN ORC, PUT "N/A" AFTER CATEGORY II, III, & IV. ALL CONCURRENCES SHOULD BE PLACED ON THE YELLOW COPY OF THE DOCUMENT.

IEPA Number: 0316230001

Facility Name: Aero Mating Works

Street: 1860 N. Tilton

City: Chicago

County: COOK

Telephone: 411A

State: IL Zip Code: 60622

Type of Facility: Notified As: *Gen.* Regulated As: *Non-Hazardous*

LDF? yes ☐ no ☒ HPV? yes ☒ no ☐ 90 Day Follow-up Required? yes ☐ no ☒

Region: 2 Date of Inspection: 10/17/86 * From: 3:00 PM to 2:45 PM

Weather (LDF Only): 10/23/86 1:30 PM to 2:00 PM

Type of Inspection

ISS: _____ Sampling: _____ Citizen Complaint: _____ Closed: _____ Withdrawal: _____

Record Review: Follow-up to Inspection of : Other: ✓

Special Request - USEPT

Non Regulated Status

Small Quant. Gen:: _____ Claimed Nonhandler: _____ Other(Specify in narrative): _____

Notified As/Regulated As Matrix Number: Key Letter:

Notification date, 9/2/81, from initial ☒ or subsequent notification.

Part A date, N/A, from initial or amended Part A:

Part B permit application submitted? yes no ☒

Has the firm been referred to: USEPA? yes ☒ no ☐ ; IAG? yes ☐ no ☒ ; County

States Attorney? yes no ☒ Date of referral to USEPA: 2/23/84

IAG: _____, County States Attorney:

Federal Court Order Issued: _____ State Court Order Issued: _____

USEPA Compliance Order Issued: 9/16/84 Illinois PCB Order Issued:

USEPA CAFO

2/13/86

TSD Facility Activity Summary

[illegible]



DATE: October 31, 1986

TO: Division File

FROM: John Maher

SUBJECT: Determination of compliance with a USEPA Compliance Order
0316230001 - Cook County - Chicago/Aero Plating Works
ILD005125836
Field Operations File

At the request of the USEPA, I inspected the subject facility for compliance with the February 13, 1986 Order entered against Respondents, Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr. This Order stipulated the following:

- I.(a) A civil penalty of \$18,500 is assessed Mr. Maiorano, Sr. and Mr. Maiorano, Jr., for violations of the Solid Waste Disposal Act found herein. Mr. Maiorano, Sr. and Mr. Maiorano, Jr. shall be jointly and severally liable for the payment of said penalty. An additional civil penalty of \$3,500 is assessed against Mr. Maiorano, Jr. for said violations.
- I.(b) Payment of the full amount of the civil penalty assessed shall be made within sixty (60) days of the service of the final order by submitting a certified or cashier's check payable to the United States of America and mailed to:

EPA - Region V
(Regional Hearing Clerk)
P.O. Box 70753
Chicago, Illinois 60673

If prior to the due date of the payment of the penalty, the Regional Administrator has approved a delayed payment schedule or payment under an installment plan with interest for either Respondent, then payment by such Respondent shall be made according to the schedule or installment plan approved by the Regional Administrator.

- II. The following compliance order is also entered against Respondents Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr.:

RECEIVED

DEC 15 1986

OWD - AIS
U.S. EPA REGION V

Aero Plating Works
0316230001/ILD005125836
Field Operations File
October 31, 1986
Page 2

1. Respondents shall within thirty (30) days of issuance of this Order cease all treatment, storage, or disposal of hazardous waste at the facility except in complete compliance with the Standards Applicable to Generators of Hazardous Waste and Owners of Hazardous Waste Treatment, Storage and Disposal Facilities, 35 Ill. Adm. Code Part 725;
- 2a. Respondents shall submit to the EPA a closure plan for the facility which is approved by the EPA as meeting the standards for such plans contained in 35 Ill. Adm. Code § 725.210, and shall detail the activities to be accomplished and that have already been accomplished by the Respondents to remove and properly dispose of or otherwise handle the hazardous waste at the facility. Said plan must be submitted within thirty (30) days from service of this Order, unless additional time is allowed by the EPA.
- b. Within thirty (30) days of EPA approval of the closure plan, Respondents shall complete closure of the facility, in accordance with the approved closure plan and shall submit a certification of closure, as required by 35 Ill. Adm. Code § 725.215.
3. Respondents shall comply immediately with the following requirements:
 - a. Prepare manifests prior to the off-site transportation of hazardous waste as required by 35 Ill. Adm. Code § 722.120(a).
 - b. Package hazardous waste according to applicable Department of Transportation regulations (49 C.F.R. Parts 173, 178 and 179) prior to transportation off-site as required by 35 Ill. Adm. Code § 722.130.

Aero Plating Works
0316230001/ILD005125836
Field Operations File
October 31, 1986
Page 3

- c. Label each drum of hazardous waste in accordance with applicable Department of Transportation regulations (40 C.F.R. Part 172) prior to transportation off-site as required by 35 Ill. Adm. Code § 722.131.
- d. Prior to shipping hazardous waste off-site mark each container of 110-gallon capacity or less with the following words as required by 35 Ill. Adm. Code § 722.132(b):

"HAZARDOUS WASTE"----Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address _____
Manifest Document Number _____

- e. Offer the transporter placards according to Department of Transportation regulations (49 C.F.R. Part 172, Subpart F) as required by 35 Ill. Adm. Code § 722.133.

Regarding I.(a) and I.(b) of the Order, I do not have the information needed to determine if these items have been complied with.

The Respondents appear to have complied with II.1. of the Order. At the time the Order was entered, the Respondents were no longer occupying the building they had been renting (i.e., 1852-1858 N. Elston Ave., owned by Seymour Shiner); Asher Industries was renting and occupying the building. The adjacent building, owned by the respondents at the time they were operating, and still owned by them, was leased by Seymour Shiner at the time the Order was entered. In short, the Respondents could not have been treating, storing or disposing of hazardous waste in non-compliance with 35 Ill. Adm. Code 725 if they were not occupying the site.

Aero Plating Works
0316230001/ILD005125836
Field Operations File
October 31, 1986
Page 4

According to Jonathan Adenuga of USEPA, the Respondents have not submitted a closure plan for the subject facility. Therefore, they have not complied with II.2a. and II.2b. of the Order.

Information is not yet available to determine if the Respondents have complied with the requirements in II.3.

Based on the above information, it appears that the Respondents have failed to comply with at least two of the stipulations (specifically, II.2a. and II.2b.) of the Order.

JEM:pgb:0374P

cc: Northern Region
Ellen Carpenter, USEPA
Jonathan Adenuga, USEPA

5HE-12

APR 29 1986

Glenn Savage, Manager
Field Operation Section
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

Re: Aero Plating Works
Chicago, Illinois
ILD 005 125 836

Dear Mr. Savage:

Enclosed is a copy of Law Judge Harwood's decision on Aero Plating Works, Chicago, Illinois. As a follow-up on this issue, I am requesting you arrange an inspection of the above referenced facility to determine compliance with the February 13, 1986 Order.

Mr. Jonathan Adenuga of my staff will be available to accompany your inspector to the facility. He can be reached at (312) 886-7954 to arrange a date.

Sincerely,

Joseph M. Boyle, Chief
IL/IN Unit
RCRA Enforcement Section

Enclosure

cc: K. Bechely, IEPA

	INVEST	FILE	SEARCHED	INDEXED	FILED	RECEIVED	DATE	TIME
DATE	4/21/86							

5HE-12:JA:lr:6-7954:4/21/86

5HE-12

APR 29 1986

Mr. Gary P. King
Senior Attorney
Enforcement Programs
Division of Land Pollution Control
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

Re: Aero Plating Works
Chicago, Illinois
ILD 005 125 836

Dear Mr. King:

Enclosed for your information is a copy of Law Judge Harwood's decision
on Aero Plating Works, Chicago, Illinois.

Sincerely,

Joseph M. Boyle, Chief
IL/IN Unit
RCRA Enforcement Section

Enclosure

cc: B. Radlinski, IEPA

bcc: A. Budich, SPS

5HE-12:JA:1r:6-7954:4/21/86

				14/11					
NOT DATE	4/21/86			JMB 4/29/86					

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Office of Administrative Law Judges

Mail Code A-110

February 21, 1986

OFFICE OF
THE ADMINISTRATOR

Babette J. Neuberger, Esquire
Office of Regional Counsel
U.S. EPA, Region V
230 South Dearborn Street
Chicago, IL 60604

Bertram A. Stone, Esquire
Stone, Pogrud & Korey
221 N. LaSalle Street, 28th Floor
Chicago, IL 60601

Subject: Aero Plating Works
Docket No. V-W-84-R-071-R

To the Parties:

Enclosed please find revised page 24 of my Initial Decision dated February 13, 1986, omitting paragraph 4 on page 25. The provision requiring Respondent to account for their hazardous waste disposed from the facility since November 19, 1980, was improperly included in the order. See my Initial Decision at page 22. Please substitute page 24 for pages 24 and 25 included in my original decision.

Sincerely,

Gerald Harwood

Gerald Harwood
Administrative Law Judge

Enclosure

Certificate of Service

I hereby certify that the original of this letter was hand delivered to the Hearing Clerk, EPA Headquarters, and copies were sent to counsel for Complainant and Respondent in this proceeding, along with a copy to the Regional Hearing Clerk, U.S. EPA, Region V.

Dottie Woodward

Dottie Woodward
Secretary to Judge Harwood

Civil Referral Package
ALJ Order Issued
final on April 13, 1986
- closure plan due May 13, 1986
40 CFR 22.27(c)

3. Respondents shall comply immediately with the following requirements:

- a. Prepare manifests prior to the off-site transportation of hazardous waste as required by 35 Ill. Adm. Code § 722.120(a).
- b. Package hazardous wastes according to applicable Department of Transportation regulations (49 C.F.R. Parts 173, 178 and 179) prior to transportation off-site as required by 35 Ill. Adm. Code §722.130.
- c. Label each drum of hazardous waste in accordance with applicable Department of Transportation regulations (40 C.F.R. Part 172) prior to transportation off-site as required by 35 Ill. Adm. Code §722.131.
- d. Prior to shipping hazardous waste off-site mark each container of 110-gallon capacity or less with the following words as required by 35 Ill. Adm. Code § 722.132(b):

"HAZARDOUS WASTE----Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address _____.
Manifest Document Number _____.

- e. Offer the transporter placards according to Department of Transportation regulations (49 C.F.R. Part 172, Subpart F) as required by 35 Ill. Adm. Code § 722.133.

Gerald Harwood
Administrative Law Judge

DATED: February 13, 1986
Washington, D.C.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:

AERO PLATING WORKS

)
)
)
)
)

DOCKET NO. V-W-84-R-071

CERTIFICATE OF SERVICE

I hereby certify that the Initial Decision in the above referenced case, and this certificate have been served as shown below:

Initial Decision & Certificate mailed Certified mail

on February 18, 1986 to:

Bertram A. Stone, Esquire
Stone, Pogrud & Korey
221 N. LaSalle Street, 28th Floor
Chicago, Illinois 60601

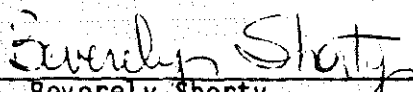
Certificate mailed February 18, 1986 to:

Regional Hearing Clerk:
Bessie Hammel
U.S. Environmental Protection Agency
401 M. Street S.W., A-110
Washington, D.C. 60204

Certificate and Initial Decision hand delivered to:

Babette J. Neuberger, Esquire
Office of Regional Counsel
U.S. Environmental Protection
Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

February 18, 1986


Beverly Shorty
Regional Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Office of Administrative Law Judges

Mail Code A-110

February 13, 1986

OFFICE OF
THE ADMINISTRATOR

Ms. Beverly Shorty
Regional Hearing Clerk
U.S. EPA, Region V
230 South Dearborn Street
Chicago, IL 60604

ILD 005125836

RECEIVED
FEB 14 1986

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Subject: Aero Plating Works
Docket No. V-W-84-R-071-P

Dear Ms. Shorty:

Enclosed for distribution in accordance with 40 CFR 22.27(a) are three copies of my Initial Decision in the subject proceeding. A certificate of service showing service upon the parties should be sent to the Hearing Clerk. The original copy of the decision together with my file in the matter have been delivered to the Hearing Clerk, and it will be unnecessary for you to forward a copy of the decision or your record of the proceeding to that office.

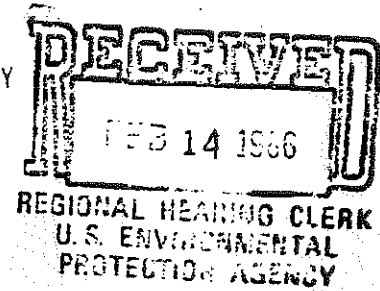
Sincerely,

Gerald Harwood

Gerald Harwood
Administrative Law Judge

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR



In the Matter of

Aero Plating Works, Inc.,

Respondent

)
)
)
)
)

Docket No. V-W-84-R-071-P

1. Operator of a hazardous waste facility asserted to have carried on business as a de facto corporation, because although corporation was dissolved for non-payment of taxes and franchise fees it was subsequently reinstated, held individually liable for the violations of RCRA and the regulations thereunder as "operator" of the facility.
2. Owner of the land and building occupied by a hazardous waste facility held jointly and severally liable with the operator of the facility for violations of RCRA and the regulations thereunder.
3. In assessing penalty for violations of RCRA and the regulations thereunder against the owner of the land and building occupied by a hazardous waste facility, penalty assessed for failure to file a Part A permit application and for failing to properly close the facility was not reduced. Penalty for other violations relating to the management of the facility was reduced because it was questionable as to how much control the owner had over the operation.

Appearance for Complainant:

Babette J. Neuberger, Esquire
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, IL 60604

Appearance for Respondent:

Bertram A. Stone, Esquire
Stone, Pogrund & Korey
221 N. LaSalle Street, 28th Floor
Chicago, IL 60601

INITIAL DECISION

This is a proceeding under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (hereafter "RCRA"), Section 3008, 42 U.S.C. 6928, on a complaint assessing civil penalties for alleged violations of the Act and containing an order requiring compliance with the Act. 1/

The complaint, issued by the United States Environmental Protection Agency ("EPA"), Region V, charged that Respondents Louis J. Maiorano, Sr., and Louis J. Maiorano, Jr., doing business as Aero Plating Works, have been storing hazardous wastes since November 19, 1980, that they have operated their facility without a permit or achieving interim status to continue operation of the facility pending issuance of a permit, and that they have violated numerous requirements prescribed by the State of Illinois under a hazardous waste program administered by the State pursuant

1/ Pertinent provisions of Section 3008 are:

Section 3008(a)(1): "[W]henever on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of this subchapter, the Administrator may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period or both"

Section 3008(g): "Any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation."

to authority granted under RCRA, Section 3006(c), 42 U.S.C. 6926. 2/

Specific violations charged were as follows:

Operating without a permit and without having achieved interim status in violation of RCRA, Section 3005(a).

Failure to submit Part A of the application for a permit, as required by 35 Ill. Adm. Code § 703.153.

Failure to conduct a general waste analysis, in accordance with a waste analysis plan, as required by 35 Ill. Adm. Code § 725.113(a) and (b).

Failure to comply with the general facility inspection requirements of 35 Ill. Adm. Code § 725.115(b) and (d).

Failure to provide personnel training, as required by 35 Ill. Adm. Code § 725.116(a).

Failure to maintain personnel training records, as required by 35 Ill. Adm. Code § 725.116(d).

Failure to equip the facility with spill control and emergency equipment, as required by 35 Ill. Adm. Code § 725.132(c).

Failure to maintain adequate aisle space, as required by 35 Ill. Adm. Code § 725.135.

Failure to make arrangements with local emergency authorities, as required by 35 Ill. Adm. Code § 725.137.

Failure to have a contingency plan, as required by 35 Ill. Adm. Code § 725.151.

Failure to designate an emergency coordinator, as required by 35 Ill. Adm. Code § 725.155.

2/ The EPA granted the State of Illinois interim authorization to operate its hazardous waste program on May 17, 1982. 47 Fed. Reg. 21043. Interim authorization included the authority to administer the regulations which are involved in this proceeding. See 47 Fed. Reg. 21045. RCRA, Section 3008(a)(2), 42 U.S.C. 6928(a)(2), authorizes the EPA to enforce state regulations issued under authorized state programs if prior notice of the enforcement action is given to the state. Such notice to the State was given in this matter. Plaintiff's Exh. 20.

Failure to maintain a written operating record, as required by 35 III. Adm. Code § 725.173.

Failure to prepare an annual report, as required by 35 III. Adm. Code § 725.175.

Failure to have a written closure plan, as required by 35 III. Adm. Code § 725.212.

Failure to complete closure in accordance with an approved closure plan as required by 35 III. Adm. Code § 725.213(b).

Failure to provide certification of facility closure by an independent registered professional engineer as required by 35 III. Adm. Code § 725.215.

Failure to provide a written estimate of the cost of closing the facility, as required by 35 III. Adm. Code § 725.242.

Failure to establish financial assurance for closure of the facility, as required by 35 III. Adm. Code § 725.243; and liability insurance for sudden and accidental occurrences as required by 35 III. Adm. Code § 725.247.

Failure to store hazardous waste in closed containers, as required by 35 III. Adm. Code § 725.273.

Failure to inspect hazardous waste containers weekly, as required by 35 III. Adm. Code § 725.274.

Failure to store hazardous waste in tanks which will not leak, corrode, etc., as required by 35 III. Adm. Code § 725.292(b).

Failure to maintain at least 2 feet of freeboard at uncovered hazardous waste tanks, as required by 35 III. Adm. Code § 725.292(c).

Failure to inspect hazardous waste storage tanks, as required by 35 III. Adm. Code § 725.294.

A penalty of \$80,000 was requested. The compliance order included in the complaint directed Respondents to submit a closure plan for the facility, to close the facility, and to prepare manifests and comply with other requirements for shipping hazardous waste off site.

Respondents answered contending that Louis Maiorano, Sr. was improperly impleaded as a party, that Louis Maiorano, Jr. was the sole corporate shareholder of Aero Plating Works, Inc., denying that Aero Plating Works, Inc. was a storage facility for hazardous waste, and denying the violations charged. Respondents also asserted that Aero Plating Works, Inc. has terminated its business operation and will comply with the compliance order.

Settlement discussions were held but were unfruitful. The matter went to hearing and a hearing was held on July 30 and 31, 1985. Both sides thereafter filed post-hearing briefs. The following decision is entered on consideration of the entire record and the parties' submissions.

Findings of Fact

The following facts are uncontested: 3/

1. Respondent, Louis J. Maiorano, Jr. owned and operated the Aero Plating Works at 1860 N. Elston Avenue, Chicago, Illinois 60622. (Stipulation, Tr. 3). 4/
2. Respondent, Louis J. Maiorano, Sr. owns the parcel of land and the structures thereon, located at 1860 N. Elston Avenue, Chicago, Illinois, 60622. (Stipulation, Tr. 9).
3. Respondent, Louis J. Maiorano, Sr. leased the land to Aero Plating Works from January 2, 1979 to December 31, 1982, and on December 10, 1982 extended the term of the lease to December 31, 1984. (Stipulation, Tr. 9).

3/ See Respondent's answer brief at 1.

4/ "Tr." refers to the transcript of the proceeding.

4. On December 1, 1980 the corporate charter of Aero Plating Works was involuntarily dissolved by the Illinois Secretary of State. (Stipulation, Tr. 3, 4).
5. The Illinois Environmental Protection Agency (IEPA) inspected the facility on September 15, 1983, and January 24, 1984. (Stipulation, Tr. 4).
6. Since November 19, 1980, wastes which have been identified or listed as hazardous wastes under Section 3001 of RCRA, 42 U.S.C. § 6921, and 35 Ill. Adm. Code § 721, have been stored at the Aero Plating Facility for longer than 90 days without a permit and without having achieved interim status. (Stipulations, Tr. 4, 9).
7. Respondent, Louis J. Maiorano, Jr. filed a notification pursuant to Section 3010 of RCRA on August 19, 1981. This notification stated that Aero Plating Works was only a generator of hazardous wastes (D007). (Stipulation, Tr. 4).
8. IEPA inspections in September 15, 1983, and January 24, 1984, revealed that the facility was operating both as a generator and treatment, storage, and disposal facility. (Stipulation, Tr. 4).
9. At the time of each of the above-referenced inspections, hazardous wastes were stored for a period in excess of 90 days, in quantities greater than 1000 kg. (Stipulation, Tr. 4).
10. Among the wastes stored on the premises were cyanide bearing wastes including spent stripping and cleaning bath solutions where cyanides were used in the process (F009). (Stipulation, Tr. 4).
11. On September 28, 1984, forty-nine 55-gallon drums of hazardous wastes containing wastewater treatment sludges from electroplating operations (F006) were hauled from the facility. (Complainant's Exh. 22; Tr. 273-274).

12. Sample results of materials identified as sludge from the basement revealed the following contaminants: cyanide, chromium, nickel.

(Complainant's Exh. 6; Tr. 282).

13. Between November 19, 1980, and sometime in 1982, "chromic rain" from the first floor operations dripped into the basement, (Tr. 505); the "chromic rain" had a low pH indicating it was an acid (Tr. 231, 232, 297).

14. Cyanide will react with an acid to form hydrogen cyanide gas which can be lethal to humans upon inhalation. (Tr. 288, 289).

15. As of the September 15, 1983 IEPA inspections, the following violations were committed:

(a) A Part A application for a Hazardous Waste Management permit had not been submitted. (Stipulation, Tr. 4).

(b) A general waste analysis to obtain all the information which must be known to treat, store, or dispose of hazardous waste had not been conducted. (Complainant's Exh. 3, Attachment A; Tr. 508).

(c) The general facility inspection requirements of 35 Ill. Adm. Code § 725.115(b) and (d) had not been complied with. (Stipulation, Tr. 5).

(d) Personnel training to teach employees to perform their duties in a way that ensures the facility's compliance with 35 Ill. Adm. Code § 725 had not been conducted. (Complainant's Exh. 3, Attachment A, Tr. 34, 35).

(e) Records setting forth job titles and job descriptions had not been maintained; nor were records kept describing the type and amount of instruction that would be given a person filling a position listed

under 35 Ill. Adm. Code § 725.116(d)(1). (Complainant's Exh. 3, Attachment A; Tr. 34, 35).

(f) The facility was not equipped with spill control and emergency equipment. (Complainant's Exh. 3, Attachment A).

(g) Annual reports covering facility activities during the previous calendar year, including the information required in 35 Ill. Adm. Code § 725.175 had not been prepared. (Complainant's Exh. 3, Attachment A).

(h) Adequate aisle space as required by 35 Ill. Adm. Code § 725.135 was not maintained. (Complainant's Exh. 3, Attachment A; Tr. 35).

(i) Arrangements with organizations such as police, fire departments, and emergency response teams whose services might be needed in an emergency were not made. (Stipulation, Tr. 5).

(j) A contingency plan that described the actions that facility personnel must take in response to explosions or any unplanned sudden or non-sudden release of hazardous waste to the air, soil, or surface; and which identified an emergency coordinator had not been prepared. (Stipulation, Tr. 5).

(k) A written operating record containing a description of waste stored, quantities of waste stored, location of those wastes, records and results of inspections was not prepared nor maintained. (Stipulation, Tr. 6).

(l) A written closure plan identifying the steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life was not prepared. (Stipulation, Tr. 6).

(m) A written estimate of the cost of closing the facility was not developed. (Stipulation, Tr. 6).

(n) Neither financial assurance for the closure of the facility, nor financial responsibility for sudden and accidental occurrences had been demonstrated. (Stipulation, Tr. 6, 7).

(o) Hazardous waste was stored in open containers. (Complainant's Exh. 3, Attachment A; Tr. 43).

(p) Weekly inspections of the hazardous waste container storage area at the facility were not conducted. (Stipulation, Tr. 5).

(q) Hazardous wastes were stored in tanks that were leaking and/or corroded. (Complainant's Exh. 3, Attachment A; Tr. 43).

(r) At least two feet of freeboard was not maintained at uncovered hazardous waste tanks. (Complainant's Exh. 3, Attachment A; Tr. 40-41).

(s) Hazardous waste storage tanks were not inspected. (Stipulation, Tr. 5).

16. IEPA informed the Respondents of the violations listed in paragraph 18, in a Compliance Inquiry Letter dated September 21, 1983. (Stipulation, Tr. 7).

17. On January 24, 1984, representatives of the IEPA inspected Respondents' facility. As of January 24, 1984 the following violations were committed:

(a) A Part A application for a Hazardous Waste Management permit had not been submitted. (Stipulation, Tr. 7).

(b) A detailed physical and chemical analysis of the waste to obtain all the information all the information which must be known to treat, store, or dispose of hazardous waste had not been conducted. (Stipulation, Tr. 7).

(c) Facility inspections requirements of 35 Ill. Adm. Code § 725.115(b) and (d) were not complied with. (Stipulation, Tr. 7, 8).

(d) Certain aspects of the personnel training requirements had been corrected, however, respondents had not completely corrected all violations of 35 Ill. Adm. Code § 725.116. (Tr. 75).

(e) Spill control and emergency equipment was not listed in the contingency plan. (Complainant's Exh. 10, Attachment A; Tr. 75).

(f) Annual reports covering facility activities during the previous calendar year, including the information required in 35 Ill. Adm. Code § 725.175 were not prepared. (Complainant's Exh. 10, Attachment A; Tr. 75).

(g) Adequate aisle space as required by 35 Ill. Adm. Code § 715.135 was not maintained. (Complainant's Exh. 10, Attachment A; Tr. 77).

(h) Copies of a contingency plan were not submitted to local emergency authorities. (Complainant's Exh. 10, Tr. 74, 75).

(i) An evacuation plan was not included in the contingency plan. (Complainant's Exh. 10, Tr. 74, 75).

(j) A written operating record containing a description of the waste stored, location of those wastes, records and results of inspections, and all closure cost estimates was not kept. (Complainant's Exh. 10, Tr. 78).

(k) A written closure plan identifying the steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life was not developed. (Stipulation, Tr. 8).

(l) A written estimate of the cost of closing the facility was not developed. (Stipulation, Tr. 8).

(m) Neither financial assurance for the closure of the facility, nor financial responsibility for sudden and accidental occurrences had been demonstrated. (Complainant's Exh. 10, Tr. 75).

(n) Hazardous waste was stored in open containers. (Complainant's Exh. 10, Tr. 77).

(o) Weekly inspections of the hazardous waste container storage area at the facility were not conducted. (Stipulation, Tr. 7).

18. IEPA informed the Respondents of the violations listed in paragraph twenty in an Enforcement Notice Letter, dated February 22, 1984, and during an enforcement conference on March 7, 1984. (Stipulation, Tr. 8).

19. During the IEPA inspection on September 15, 1983, eight discontinued plating tanks containing listed hazardous waste F008 were located along the east wall of the main floor. (Complainant's Exh. 3).

20. As of August 6, 1984, at least a portion of the facility had been leased to new tenants, even though hazardous waste drums from Respondents' operations were scattered throughout the facility; the floor along the east side of the building was contaminated; reactive hazardous wastes were stored haphazardly in the chemical room; and the contaminated north plating line was still standing. The new tenants were located in the same areas of the building as the just described contaminant's. (Complainant's Exh. 21; Tr. 107).

21. A closure plan was not submitted to IEPA or EPA until March 13, 1985, when it was subsequently disapproved. (Complainant's Exh's. 23, 24; Tr. 373).

22. Additional work is necessary to completely dismantle and decontaminate the facility. (Tr. 494).

entire record in this proceeding that he not only made the decisions with respect to the operations of the company but also was very much involved in carrying them out. Mr. Maiorano, Jr. then is plainly an "operator" of the facility as defined in the RCRA regulations, and as such personally liable for the violations. 9/

The EPA also contends that even under Illinois law, reinstatement of the corporate charter would not absolve Mr. Maiorano, Jr. from personal liability, citing Estate of Plepel v. Industrial Metals, Inc., 450 N.E. 2d 1244 (1st App. Dist. 1983). 10/ The test therein enunciated of whether an individual acting for a defective corporation becomes personally liable seems to depend on whether the party asserting liability intended to make the individual personally liable. 11/ Under such a test, if during the period that Aero Plating was not legally incorporated, the State and the EPA still dealt with Aero Plating as a corporate entity, Mr. Maiorano, Jr. presumably would be able to escape individual liability. The EPA appears to ignore that issue and rest its argument solely on the fact that the corporation had been involuntarily dissolved. In any event, Estate of Plepel was

9/ "Operator" is defined to mean "the person responsible for the overall operation of a facility." 40 C.F.R. 260.10. This clearly fits Maiorano, Jr.'s relationship to Aero Plating. Such administrative construction of a statutory term is, of course, entitled to great weight. Chevron U.S.A. v. Natural Resources Defense Council, 467 U.S. _____, 81 L.Ed.2d 694, 703-04 (1984), Udall v. Tallman, 380 U.S. 1, 16 (1965). Since the Illinois program was approved as "substantially equivalent" to the Federal program (47 Fed. Reg. 21045 (May 17, 1982)), it is presumed that the Illinois regulations, although not always as specific, are to be construed the same as the Federal. See 35 Ill. Adm. Code 702.109. Certainly, I have found nothing to the contrary in the State regulations nor has any provision in the regulations or any case been cited to me to indicate otherwise.

10/ Estate of Plepel is attached to Complainant's response to motion to strike complaint filed November 15, 1984, in the pleadings file.

11/ Estate of Plepel, 450 N.E. 2d at 1247.

an action for debt and would not necessarily apply here because the liability involved, creating an environmentally hazardous condition, is more like a tort against the public, and the general rule appears to be that corporate officials who participate in a tort are jointly liable with the corporation for the injury caused. Escude Cruz v. Ortho Pharmaceutical Corp., 619 F.2d 902, 907 (1st Cir. 1980), New York v. Shore Realty Corp., 759 F.2d at 1032, 1051 (2d Cir. 1985). ^{12/} Liability here, however, is predicated upon the provisions of RCRA and the regulations issued thereunder, and not upon general State law regarding the personal liability of officers of de facto corporations.

It is found, accordingly, that Mr. Maiorano, Jr. is personally liable for the violations, and for the penalty exacted for them.

The Personal Liability of Louis Maiorano, Sr.

Louis Maiorano, Sr. is the owner of the land on which Aero Plating was located and the building in which it was housed. As such he is an owner or at least part owner of the facility. ^{13/} The performance standards authorized by RCRA, Section 3004 (which includes the interim status requirements) apply to both owners and operators of facilities, as do also the

^{12/} Respondents says Estate of Plepel is not applicable since the case imposes personal liability only where reinstatement would substitute worthless corporate liability for valuable personal liability, and that would not be true here since assertedly Maiorano, Jr. has no more assets than the corporation. Answer brief at 9. The evidence of Mr. Maiorano, Jr.'s financial condition does not support a finding that his financial resources are as limited as Respondents claim.

^{13/} See definition of "facility" in 40 C.F.R. 260.10, and definition of "Hazardous Waste Management Facility," 35 Ill. Adm. Code 702.110.

permitting requirements of RCRA, Section 3005. The EPA has construed these provisions as making the owner and operator of a facility jointly and severally responsible for carrying out the requirements of the hazardous waste regulations and for obtaining a permit. 14/ As an administrative construction it is again entitled to great weight. 15/ In short, Mr. Maiorano, Sr.'s personal liability does not rest upon the extent to which he actively participated in the operation of the facility or even knew of the violations, but on his ownership of the facility. 16/ The extent to which he actively participated in the facility's operation, however, is relevant in determining the appropriate penalty to be assessed against him. 17/

The Reasonableness of the Penalty

The EPA has provided a detailed justification of how the penalty conforms with the EPA's RCRA Civil Penalty Policy, taking into account the seriousness of the violations, as determined by their potential harm and the extent they deviate from regulatory requirements. 18/

14/ See 47 Fed. Reg. 32039 (July 23, 1982), where the EPA explained why it requires the signature of both the owner and operator on a permit application. The only instance where the EPA would not hold the owner jointly and severally liable is where the owner holds only bare legal title for the purpose of providing security for a financing agreement. See 45 Fed. Reg. 74490 (November 10, 1980). There is no evidence here that Mr. Maiorano, Sr.'s ownership was of this nature.

15/ See supra at 14, n. 9.

16/ The case of Alton & Southern NY Co. v. Illinois Pollution Control Board, 12 Ill. App. 3d 319, 297 N.E. 2d 762 (5th App. Dist. 1973), relied on by Respondents is not in point because it does not deal with liability under RCRA.

17/ See infra at 20.

18/ Complainant's brief in support of proposed order at 16-40.

The potential harm created by the violations, surely a reasonable factor in determining the seriousness of the violation, is explained by Dr. Homer, an expert in the assessment of the risks associated with hazardous waste sites. 19/ What is missing, however, is some firm evidence showing precisely what quantities of hazardous waste were involved and for what periods of time. This is a factor which is also to be considered in the potential for harm. 20/ The notification of hazardous waste activity and Part A permit application are of primary importance to the regulatory purposes of RCRA, and the proposed penalty of \$17,000 for failure to comply with these requirements should stand. I find, however, that the penalty for the remaining violations should be reduced to \$19,500, making a total assessed penalty of \$36,500. 21/

Respondents argue that there is no evidence establishing the duration of the violations charged. Drums of mud from the basement observed during the January 1984 inspection were found to contain cyanide, a hazardous constituent of F006 waste (waste water treatment sludges from electroplating operations) and F009 waste (spent stripping and cleaning bath solutions from electroplating operations). 22/ The evidence indicates

19/ Tr. 283-303.

20/ RCRA Civil Penalty Policy, Plaintiff's Exh. 69, at 6.

21/ In effect this has meant placing all violations in the minor "potential for harm" category because of the failure of the record to show what actual quantities of hazardous waste have been involved. A penalty of \$3,000 each is assessed for the two violations dealing with closing the facility and \$1500 for each of the remaining violations.

22/ Tr. 274, 277; Plaintiff's Exh. 6 (Sample Nos. X107, X108, X109).

that this waste could have dated back to sludge from electroplating operations found on Aero Plating's basement floor in 1981. 23/ There is no credible evidence indicating it was all of recent origin. 24/ It is found, accordingly, that there have been continuing violations since 1981. 25/

Respondents presumably to show their good faith point out that the four discontinued plating tanks were triple rinsed in order to remove all plating waste before being disposed of, that Aero Plating had a contingency plan after the first inspection and that it also had a personnel training program. 26/ Respondents, however, produced no evidence, such as tests

23/ See Plaintiff's Exhs. 49, 56.

24/ Respondents have been storing hazardous wastes since November 19, 1980, and proffered no evidence showing shipments of listed wastes prior to September 28, 1984. Respondents concede that not all of the shipment on September 28, 1984, was of current (less than 90 days) origin. See Finding of Fact No. 6; Plaintiff's Exhs. 22, 23. If the mud in the drums sampled by the State investigators was a mixture of a listed waste and other waste resulting from a spill instead of being solely a listed waste, it would still be hazardous waste the storage of which was subject to RCRA's requirements. See 40 C.F.R. 261.3(a)(2)(iv), 207.2(c)(3); 35 111. Adm. Code 721.103(b), 725.101(c)(11).

25/ A sample from the debris and sludge pile located in the basement was also found to contain cyanide. Plaintiff's Exh. 6 (Sample No. X118); Plaintiff's Exh. 11 (p. 2 and Photograph No. 12). The most logical explanation for the presence of the cyanide is that the debris and sludge became contaminated with spills and drippings of cyanide bearing materials from the first floor which were occurring as early as 1981. Tr. 225, 478. Maiorano, Jr.'s testimony to the contrary (Tr. 480, 505) is unpersuasive because he never did really explain how the waste pile and mud could have been contaminated with cyanide (see Tr. 484-85). Respondents' proposed finding that the pile of debris and sludge on the basement floor was not contaminated from discharges from the floor above (Answering brief at 1) is rejected for the same reason.

26/ Respondents' answer brief at 1-2. The tanks referred to by Respondents would appear to be those found during the inspection on August 28, 1984, which were discolored by various materials on the outside and which were observed to have sludge and fluid on the inside. See Plaintiff's Exh. 13 (Photograph No. 29); Plaintiff's Exh. 19A; Tr. 117-18.

of samples taken from the tanks and their surfaces, showing that the rinsing of the tanks was sufficient to decontaminate them. The contingency plan was also deficient in several respects. 27/ Thus, these instances do not add up to a persuasive showing of a conscientious effort to achieve full compliance with the requirements.

The remaining questions to be considered are whether any penalty is merited against Mr. Maiorano, Sr. since he assertedly did not know about the violations and had no control over the business of Aero Plating, and whether an adjustment should be made in the case of either Respondent because of his asserted inability to pay the penalty.

With respect to Mr. Maiorano, Sr., the records shows that aside from his ownership of the facility, he also worked as a "consultant" for Aero Plating, that he was present during the inspections of the facility and also at an enforcement meeting with the Illinois Environmental Protection Agency in May 1984. 28/ In addition, he called the State about the disposal of the drums of chromic acid which had been found on a trailer near the facility. 29/ The evidence shows, however, that Mr. Maiorano, Sr. did in good faith transfer the business to his son Louis Maiorano, Jr. in 1979, prior to the time the violations occurred. 30/ It is questionable, then, how much control Mr. Maiorano, Sr. really could exercise over the

27/ Tr. 73-74.

28/ Tr. 63, 66, 111; Complainant's Exh. 13.

29/ Tr. 50-51. The drums of chromic acid, however, are not being questioned as constituting hazardous waste. Tr. 463.

30/ Tr. 413-20.

operations of the business during the time the violations arose, and to what extent he should really be held responsible for such violations. The penalty policy recognizes that lack of willfulness or negligence may justify a reduction in the gravity based penalty. 31/ It could be argued that such a defense is available only to the operator of the facility, and the owner is strictly liable for whatever penalty is assessed against the operator. This seems an unnecessarily harsh construction, however, and since it is not clear that this is what was intended by the penalty policy, it will not be followed here.

As to the failure to file a permit, the owner of the facility is equally responsible with the operator for complying with this requirement. Accordingly, a penalty of \$10,500 is assessed against both. Mr. Maiorano, Sr. must also bear equal responsibility with Mr. Maiorano, Jr. for not properly closing the facility. Accordingly, a penalty of \$6,000 is also assessed against both for these violations. 32/ As to the remaining violations, Mr. Maiorano, Jr. must really bear the primary responsibility for them. Accordingly, the penalty against Mr. Maiorano, Sr. for these violations is reduced to \$2,000. A further reduction is not warranted because Mr. Maiorano, Sr. undoubtedly knew generally how the business was being operated and his relationship as owner of the property and creditor precludes assuming that he had no say whatever on how the business was being operated. Thus, the penalty to be assessed against Mr. Maiorano, Sr.

31/ Plaintiff's Exh. 69 at 17-18.

32/ See supra at 17, n. 21.

for which he will be jointly and severably liable with Mr. Maiorano, Jr. is \$18,500.

Also to be considered is the ability of Mr. Maiorano, Sr. to pay the penalty assessed herein. Contrary to what Respondents argue (answering brief at 8), the burden rests upon Respondent to establish his inability to pay. 33/ Since the Aero Plating operation has been closed, there is no concern here about whether the penalty assessed would put the company out of business. The evidence submitted by Mr. Maiorano, Sr. does not demonstrate that he would have insufficient assets and income to pay the \$18,500 penalty, if not in one sum, than at least by installments or deferred payments, even assuming he will still have to pay closing costs in some unspecified amount. 34/

In the case of Mr. Maiorano, Jr., the only adjustment that would be warranted would be his asserted inability to pay the penalty. Mr. Maiorano, Jr., has furnished some financial data which is sufficient to merit a reduction of the penalty to \$22,000 (a reduction of approximately 40%), having in mind that Mr. Maiorano, Jr. would also be jointly responsible for closing the facility. 35/

33/ See RCRA Penalty Policy, Plaintiff's Exh. 69 at 20. Placing the burden on Respondent is in accordance with the general rule that the burden should be borne by the one naturally possessed of the relevant evidence. Commonwealth of Puerto Rico v. Federal Maritime Commission, 468 F.2d 872, 881 (D.C. Cir. 1972), United States v. Continental Insurance Co., 776 F.2d. 962, 964 (11th Cir. 1985).

34/ Tr. 447-51, 452.

35/ Respondents Exh. 7. The information furnished in Respondents' prehearing exchange was also considered.

Finally, the EPA in its compliance order would require Respondents to account for their disposal of hazardous waste since November 19, 1980. It is doubtful whether Respondents really have the records that would enable them to do so, and, accordingly, the provision is stricken from the order.

ORDER 36/

Pursuant to the Solid Waste Disposal Act, as amended, Section 3008, 42 U.S.C. 6928, the following order is entered against Respondents, Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr.:

I.(a) A civil penalty of \$18,500 is assessed Mr. Maiorano, Sr. and Mr. Maiorano, Jr., for violations of the solid Waste Disposal Act found herein. Mr. Maiorano, Sr. and Mr. Maiorano, Jr. shall be jointly and severally liable for the payment of said penalty. An additional civil penalty of \$3,500 is assessed against Mr. Maiorano, Jr. for said violations.

I.(b) Payment of the full amount of the civil penalty assessed shall be made within sixty (60) days of the service of the final order by submitting a certified or cashier's check payable to the United States of America and mailed to:

EPA - Region V
(Regional Hearing Clerk)
P.O. Box 70753
Chicago, IL 60673

36/ Unless an appeal is taken pursuant to the Rules of Practice, 40 C.F.R. 22.30, or the Administrator elects to review this decision on his own motion, the Initial Decision shall become the final order of the Administrator. See 40 C.F.R. 22.27(c).

If prior to the due date of the payment of the penalty, the Regional Administrator has approved a delayed payment schedule or payment under an installment plan with interest for either Respondent, then payment by such Respondent shall be made according to the schedule or installment plan approved by the Regional Administrator.

II. The following compliance order is also entered against Respondents Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr.:

1. Respondents shall within thirty (30) days of issuance of this Order cease all treatment, storage, or disposal of hazardous waste at the facility except in complete compliance with the Standards Applicable to Generators of Hazardous Waste and Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, 35 Ill. Adm. Code Part 725;

2a. Respondents shall submit to the EPA a closure plan for the facility which is approved by the EPA as meeting the standards for such plans contained in 35 Ill. Adm. Code § 725.210, and shall detail the activities to be accomplished and that have already been accomplished by the Respondents to remove and properly dispose of or otherwise handle the hazardous waste at the facility. Said plan must be submitted within thirty (30) days from service of this Order, unless additional time is allowed by the EPA.

b. Within 30 days of EPA approval of the closure plan, Respondents shall complete closure of the facility, in accordance with the approved closure plan and shall submit a certification of closure, as required by 35 Ill. Adm. Code § 725.215.

3. Respondents shall comply immediately with the following requirements:

- a. Prepare manifests prior to the off-site transportation of hazardous waste as required by 35 Ill. Adm. Code § 722.120(a).
- b. Package hazardous wastes according to applicable Department of Transportation regulations (49 C.F.R. Parts 173, 178 and 179) prior to transportation off-site as required by 35 Ill. Adm. Code §722.130.
- c. Label each drum of hazardous waste in accordance with applicable Department of Transportation regulations (40 C.F.R. Part 172) prior to transportation off-site as required by 35 Ill. Adm. Code §722.131.
- d. Prior to shipping hazardous waste off-site mark each container of 110-gallon capacity or less with the following words as required by 35 Ill. Adm. Code § 722.132(b):

"HAZARDOUS WASTE----Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address _____.
 Manifest Document Number _____.

- e. Offer the transporter placards according to Department of Transportation regulations (49 C.F.R. Part 172, Subpart F) as required by 35 Ill. Adm. Code § 722.133.

 Gerald Harwood
 Administrative Law Judge

DATED: February 13, 1986
 Washington, D.C.

3. Respondents shall comply immediately with the following requirements:

- a. Prepare manifests prior to the off-site transportation of hazardous waste as required by 35 111. Adm. Code § 722.120(a).
- b. Package hazardous wastes according to applicable Department of Transportation regulations (49 C.F.R. Parts 173, 178 and 179) prior to transportation off-site as required by 35 111. Adm. Code §722.130.
- c. Label each drum of hazardous waste in accordance with applicable Department of Transportation regulations (40 C.F.R. Part 172) prior to transportation off-site as required by 35 111. Adm. Code §722.131.
- d. Prior to shipping hazardous waste off-site mark each container of 110-gallon capacity or less with the following words as required by 35 111. Adm. Code § 722.132(b):

"HAZARDOUS WASTE----Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address _____
 Manifest Document Number _____

- e. Offer the transporter placards according to Department of Transportation regulations (49 C.F.R. Part 172, Subpart F) as required by 35 111. Adm. Code § 722.133.

Revised 2-21-86

4. Respondents shall, within forty-five (45) days of entry of this Order, provide EPA with a full accounting of all hazardous waste disposed from the facility since November 19, 1980, including quantity and chemical composition of the waste, and identity of the hauler and disposal facility, if any.

Gerald Harwood
Gerald Harwood
Administrative Law Judge

DATED: February 13, 1986
Washington, D.C.

revised 2-21-86

2/13/84

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of

Aero Plating Works, Inc.,

Respondent

)
)
) Docket No. V-W-84-R-071-P
)
)

1. Operator of a hazardous waste facility asserted to have carried on business as a de facto corporation, because although corporation was dissolved for non-payment of taxes and franchise fees it was subsequently reinstated, held individually liable for the violations of RCRA and the regulations thereunder as "operator" of the facility.
2. Owner of the land and building occupied by a hazardous waste facility held jointly and severally liable with the operator of the facility for violations of RCRA and the regulations thereunder.
3. In assessing penalty for violations of RCRA and the regulations thereunder against the owner of the land and building occupied by a hazardous waste facility, penalty assessed for failure to file a Part A permit application and for failing to properly close the facility was not reduced. Penalty for other violations relating to the management of the facility was reduced because it was questionable as to how much control the owner had over the operation.

Appearance for Complainant:

Babette J. Neuberger, Esquire
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, IL 60604

Appearance for Respondent:

Bertram A. Stone, Esquire
Stone, Pogrund & Korey
221 N. LaSalle Street, 28th Floor
Chicago, IL 60601

INITIAL DECISION

This is a proceeding under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (hereafter "RCRA"), Section 3008, 42 U.S.C. 6928, on a complaint assessing civil penalties for alleged violations of the Act and containing an order requiring compliance with the Act. 1/

The complaint, issued by the United States Environmental Protection Agency ("EPA"), Region V, charged that Respondents Louis J. Maiorano, Sr., and Louis J. Maiorano, Jr., doing business as Aero Plating Works, have been storing hazardous wastes since November 19, 1980, that they have operated their facility without a permit or achieving interim status to continue operation of the facility pending issuance of a permit, and that they have violated numerous requirements prescribed by the State of Illinois under a hazardous waste program administered by the State pursuant

1/ Pertinent provisions of Section 3008 are:

Section 3008(a)(1): "[W]henver on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of this subchapter, the Administrator may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period or both"

Section 3008(g): "Any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation."

to authority granted under RCRA, Section 3006(c), 42 U.S.C. 6926. 2/

Specific violations charged were as follows:

Operating without a permit and without having achieved interim status in violation of RCRA, Section 3005(a).

Failure to submit Part A of the application for a permit, as required by 35 Ill. Adm. Code § 703.153.

Failure to conduct a general waste analysis, in accordance with a waste analysis plan, as required by 35 Ill. Adm. Code § 725.113(a) and (b).

Failure to comply with the general facility inspection requirements of 35 Ill. Adm. Code § 725.115(b) and (d).

Failure to provide personnel training, as required by 35 Ill. Adm. Code § 725.116(a).

Failure to maintain personnel training records, as required by 35 Ill. Adm. Code § 725.116(d).

Failure to equip the facility with spill control and emergency equipment, as required by 35 Ill. Adm. Code § 725.132(c).

Failure to maintain adequate aisle space, as required by 35 Ill. Adm. Code § 725.135.

Failure to make arrangements with local emergency authorities, as required by 35 Ill. Adm. Code § 725.137.

Failure to have a contingency plan, as required by 35 Ill. Adm. Code § 725.151.

Failure to designate an emergency coordinator, as required by 35 Ill. Adm. Code § 725.155.

2/ The EPA granted the State of Illinois interim authorization to operate its hazardous waste program on May 17, 1982. 47 Fed. Reg. 21043. Interim authorization included the authority to administer the regulations which are involved in this proceeding. See 47 Fed. Reg. 21045. RCRA, Section 3008(a)(2), 42 U.S.C. 6928(a)(2), authorizes the EPA to enforce state regulations issued under authorized state programs if prior notice of the enforcement action is given to the state. Such notice to the State was given in this matter. Plaintiff's Exh. 20.

Failure to maintain a written operating record, as required by 35 III. Adm. Code § 725.173.

Failure to prepare an annual report, as required by 35 III. Adm. Code § 725.175.

Failure to have a written closure plan, as required by 35 III. Adm. Code § 725.212.

Failure to complete closure in accordance with an approved closure plan as required by 35 III. Adm. Code § 725.213(b).

Failure to provide certification of facility closure by an independent registered professional engineer as required by 35 III. Adm. Code § 725.215.

Failure to provide a written estimate of the cost of closing the facility, as required by 35 III. Adm. Code § 725.242.

Failure to establish financial assurance for closure of the facility, as required by 35 III. Adm. Code § 725.243; and liability insurance for sudden and accidental occurrences as required by 35 III. Adm. Code § 725.247.

Failure to store hazardous waste in closed containers, as required by 35 III. Adm. Code § 725.273.

Failure to inspect hazardous waste containers weekly, as required by 35 III. Adm. Code § 725.274.

Failure to store hazardous waste in tanks which will not leak, corrode, etc., as required by 35 III. Adm. Code § 725.292(b).

Failure to maintain at least 2 feet of freeboard at uncovered hazardous waste tanks, as required by 35 III. Adm. Code § 725.292(c).

Failure to inspect hazardous waste storage tanks, as required by 35 III. Adm. Code § 725.294.

A penalty of \$80,000 was requested. The compliance order included in the complaint directed Respondents to submit a closure plan for the facility, to close the facility, and to prepare manifests and comply with other requirements for shipping hazardous waste off site.

Respondents answered contending that Louis Maiorano, Sr. was improperly impleaded as a party, that Louis Maiorano, Jr. was the sole corporate shareholder of Aero Plating Works, Inc., denying that Aero Plating Works, Inc. was a storage facility for hazardous waste, and denying the violations charged. Respondents also asserted that Aero Plating Works, Inc. has terminated its business operation and will comply with the compliance order.

Settlement discussions were held but were unfruitful. The matter went to hearing and a hearing was held on July 30 and 31, 1985. Both sides thereafter filed post-hearing briefs. The following decision is entered on consideration of the entire record and the parties' submissions.

Findings of Fact

The following facts are uncontested: 3/

1. Respondent, Louis J. Maiorano, Jr. owned and operated the Aero Plating Works at 1860 N. Elston Avenue, Chicago, Illinois 60622. (Stipulation, Tr. 3). 4/
2. Respondent, Louis J. Maiorano, Sr. owns the parcel of land and the structures thereon, located at 1860 N. Elston Avenue, Chicago, Illinois, 60622. (Stipulation, Tr. 9).
3. Respondent, Louis J. Maiorano, Sr. leased the land to Aero Plating Works from January 2, 1979 to December 31, 1982, and on December 10, 1982 extended the term of the lease to December 31, 1984. (Stipulation, Tr. 9).

3/ See Respondent's answer brief at 1.

4/ "Tr." refers to the transcript of the proceeding.

4. On December 1, 1980 the corporate charter of Aero Plating Works was involuntarily dissolved by the Illinois Secretary of State. (Stipulation, Tr. 3, 4).
5. The Illinois Environmental Protection Agency (IEPA) inspected the facility on September 15, 1983, and January 24, 1984. (Stipulation, Tr. 4).
6. Since November 19, 1980, wastes which have been identified or listed as hazardous wastes under Section 3001 of RCRA, 42 U.S.C. § 6921, and 35 Ill. Adm. Code § 721, have been stored at the Aero Plating Facility for longer than 90 days without a permit and without having achieved interim status. (Stipulations, Tr. 4, 9).
7. Respondent, Louis J. Maiorano, Jr. filed a notification pursuant to Section 3010 of RCRA on August 19, 1981. This notification stated that Aero Plating Works was only a generator of hazardous wastes (D007). (Stipulation, Tr. 4).
8. IEPA inspections in September 15, 1983, and January 24, 1984, revealed that the facility was operating both as a generator and treatment, storage, and disposal facility. (Stipulation, Tr. 4).
9. At the time of each of the above-referenced inspections, hazardous wastes were stored for a period in excess of 90 days, in quantities greater than 1000 kg. (Stipulation, Tr. 4).
10. Among the wastes stored on the premises were cyanide bearing wastes including spent stripping and cleaning bath solutions where cyanides were used in the process (F009). (Stipulation, Tr. 4).
11. On September 28, 1984, forty-nine 55-gallon drums of hazardous wastes containing wastewater treatment sludges from electroplating operations (F006) were hauled from the facility. (Complainant's Exh. 22; Tr. 273-274).

12. Sample results of materials identified as sludge from the basement revealed the following contaminants: cyanide, chromium, nickel.

(Complainant's Exh. 6; Tr. 282).

13. Between November 19, 1980, and sometime in 1982, "chromic rain" from the first floor operations dripped into the basement, (Tr. 505); the "chromic rain" had a low pH indicating it was an acid (Tr. 231, 232, 297).

14. Cyanide will react with an acid to form hydrogen cyanide gas which can be lethal to humans upon inhalation. (Tr. 288, 289).

15. As of the September 15, 1983 IEPA inspections, the following violations were committed:

(a) A Part A application for a Hazardous Waste Management permit had not been submitted. (Stipulation, Tr. 4).

(b) A general waste analysis to obtain all the information which must be known to treat, store, or dispose of hazardous waste had not been conducted. (Complainant's Exh. 3, Attachment A; Tr. 508).

(c) The general facility inspection requirements of 35 Ill. Adm. Code § 725.115(b) and (d) had not been complied with. (Stipulation, Tr. 5).

(d) Personnel training to teach employees to perform their duties in a way that ensures the facility's compliance with 35 Ill. Adm. Code § 725 had not been conducted. (Complainant's Exh. 3, Attachment A, Tr. 34, 35).

(e) Records setting forth job titles and job descriptions had not been maintained; nor were records kept describing the type and amount of instruction that would be given a person filling a position listed

under 35 Ill. Adm. Code § 725.116(d)(1). (Complainant's Exh. 3, Attachment A; Tr. 34, 35).

(f) ~~The~~ facility was not equipped with spill control and emergency equipment. (Complainant's Exh. 3, Attachment A).

(g) Annual reports covering facility activities during the previous calendar year, including the information required in 35 Ill. Adm. Code § 725.175 had not been prepared. (Complainant's Exh. 3, Attachment A).

(h) Adequate aisle space as required by 35 Ill. Adm. Code § 725.135 was not maintained. (Complainant's Exh. 3, Attachment A; Tr. 35).

(i) Arrangements with organizations such as police, fire departments, and emergency response teams whose services might be needed in an emergency were not made. (Stipulation, Tr. 5).

(j) A contingency plan that described the actions that facility personnel must take in response to explosions or any unplanned sudden or non-sudden release of hazardous waste to the air, soil, or surface; and which identified an emergency coordinator had not been prepared. (Stipulation, Tr. 5).

(k) A written operating record containing a description of waste stored, quantities of waste stored, location of those wastes, records and results of inspections was not prepared nor maintained. (Stipulation, Tr. 6).

(l) A written closure plan identifying the steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life was not prepared. (Stipulation, Tr. 6).

(m) A written estimate of the cost of closing the facility was not developed. (Stipulation, Tr. 6).

(n) Neither financial assurance for the closure of the facility, nor financial responsibility for sudden and accidental occurrences had been demonstrated. (Stipulation, Tr. 6, 7).

(o) Hazardous waste was stored in open containers. (Complainant's Exh. 3, Attachment A; Tr. 43).

(p) Weekly inspections of the hazardous waste container storage area at the facility were not conducted. (Stipulation, Tr. 5).

(q) Hazardous wastes were stored in tanks that were leaking and/or corroded. (Complainant's Exh. 3, Attachment A; Tr. 43).

(r) At least two feet of freeboard was not maintained at uncovered hazardous waste tanks. (Complainant's Exh. 3, Attachment A; Tr. 40-41).

(s) Hazardous waste storage tanks were not inspected. (Stipulation, Tr. 5).

16. IEPA informed the Respondents of the violations listed in paragraph 18, in a Compliance Inquiry Letter dated September 21, 1983. (Stipulation, Tr. 7).

17. On January 24, 1984, representatives of the IEPA inspected Respondents' facility. As of January 24, 1984 the following violations were committed:

(a) A Part A application for a Hazardous Waste Management permit had not been submitted. (Stipulation, Tr. 7).

(b) A detailed physical and chemical analysis of the waste to obtain all the information all the information which must be known to treat, store, or dispose of hazardous waste had not been conducted. (Stipulation, Tr. 7).

(c) Facility inspections requirements of 35 Ill. Adm. Code § 725.115(b) and (d) were not complied with. (Stipulation, Tr. 7, 8).

(d) Certain aspects of the personnel training requirements had been corrected, however, respondents had not completely corrected all violations of 35 Ill. Adm. Code § 725.116. (Tr. 75).

(e) Spill control and emergency equipment was not listed in the contingency plan. (Complainant's Exh. 10, Attachment A; Tr. 75).

(f) Annual reports covering facility activities during the previous calendar year, including the information required in 35 Ill. Adm. Code § 725.175 were not prepared. (Complainant's Exh. 10, Attachment A; Tr. 75).

(g) Adequate aisle space as required by 35 Ill. Adm. Code § 715.135 was not maintained. (Complainant's Exh. 10, Attachment A; Tr. 77).

(h) Copies of a contingency plan were not submitted to local emergency authorities. (Complainant's Exh. 10, Tr. 74, 75).

(i) An evacuation plan was not included in the contingency plan. (Complainant's Exh. 10, Tr. 74, 75).

(j) A written operating record containing a description of the waste stored, location of those wastes, records and results of inspections, and all closure cost estimates was not kept. (Complainant's Exh. 10, Tr. 78).

(k) A written closure plan identifying the steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life was not developed. (Stipulation, Tr. 8).

(l) A written estimate of the cost of closing the facility was not developed. (Stipulation, Tr. 8).

(m) Neither financial assurance for the closure of the facility, nor financial responsibility for sudden and accidental occurrences had been demonstrated. (Complainant's Exh. 10, Tr. 75).

(n) Hazardous waste was stored in open containers. (Complainant's Exh. 10, Tr. 77).

(o) Weekly inspections of the hazardous waste container storage area at the facility were not conducted. (Stipulation, Tr. 7).

18. IEPA informed the Respondents of the violations listed in paragraph twenty in an Enforcement Notice Letter, dated February 22, 1984, and during an enforcement conference on March 7, 1984. (Stipulation, Tr. 8).

19. During the IEPA inspection on September 15, 1983, eight discontinued plating tanks containing listed hazardous waste F008 were located along the east wall of the main floor. (Complainant's Exh. 3).

20. As of August 6, 1984, at least a portion of the facility had been leased to new tenants, even though hazardous waste drums from Respondents' operations were scattered throughout the facility; the floor along the east side of the building was contaminated; reactive hazardous wastes were stored haphazardly in the chemical room; and the contaminated north plating line was still standing. The new tenants were located in the same areas of the building as the just described contaminant's. (Complainant's Exh. 21; Tr. 107).

21. A closure plan was not submitted to IEPA or EPA until March 13, 1985, when it was subsequently disapproved. (Complainant's Exh's. 23, 24; Tr. 373).

22. Additional work is necessary to completely dismantle and decontaminate the facility. (Tr. 494).

Discussion, Conclusions and Penalty

The dispute in this case centers not around the violations charged in the operation of the Aero Plating Works facility, but on the reasonableness of the proposed aggregate penalty of \$80,000, and the personal liability of Mr. Maiorano, Sr., and Mr. Maiorano, Jr. for the penalty. The violations established by the record and the penalties proposed by the EPA for them are as follows:

Failure to submit a preliminary notification of operating as a hazardous waste storage facility as required by RCRA Section 3010. 5/	\$ 6,500.00
Failure to file a Part A permit application as required by 35 Ill. Adm. Code § 703.150 and 703.153.	\$10,500.00
Failure to develop and maintain a written operating record as required by 35 Ill. Adm. Code § 725.173.	\$ 3,000.00
Failure to obtain a general waste analysis in accordance with a waste analysis plan as required by 35 Ill. Adm. Code § 725.113 (a) and (b).	\$ 3,000.00
Failure to develop and maintain a written contingency plan as required by 35 Ill. Adm. Code §§ 725.151, 725.152(e) and (f), 725.153 and 725.155.	\$10,500.00
Failure to maintain emergency equipment as required by 35 Ill. Adm. Code § 725.132(c).	\$ 2,500.00

5/ State authorization did not dispense with the statutory requirement of filing a preliminary notification of hazardous waste activity under RCRA 3010. It merely meant that after state authorization, the notifications had to be filed with the State. See RCRA, Section 3010(a). The wastes handled by Aero Plating, D007, F006 and F009 first became subject to regulation on November 19, 1980. See 45 Fed. Reg. 33084 (May 19, 1980). Prior to Illinois receiving interim authority to administer its own RCRA program in May 17, 1982, Aero Plating was subject to the Federal program.

Failure to make arrangements with the local authorities as required by 35 <u>III</u> . <u>Adm. Code</u> § 725.137.	\$ 3,000.00
Failure to conduct inspections of storage areas as required by 35 <u>III</u> . <u>Adm. Code</u> § 725.115(b) and (d).	\$ 3,000.00
Failure to manage containers and tanks properly as required by 35 <u>III</u> . <u>Adm. Code</u> §§ 725.135, 725.273(a) and (b), 725.292.	\$ 3,000.00
Failure to conduct personnel training as required by 35 <u>III</u> . <u>Adm. Code</u> § 725.116(a).	\$ 2,500.00
Failure to prepare and submit an annual report are required by 35 <u>III</u> . <u>Adm. Code</u> § 725.175.	\$ 3,000.00
Failure to develop a closure plan and to close the facility in accordance with an approval plan as required by 35 <u>III</u> . <u>Adm. Code</u> §§ 725.212 and 725.213.	\$20,000.00
Failure to establish a cost estimate for closure; financial assurance for closure; and liability insurance as required by 35 <u>III</u> . <u>Adm. Code</u> §§ 725.242, 725.243 and 725.247.	<u>\$ 9,500.00</u>
Total Proposed Penalty	\$80,000.00

The Personal Liability of Louis Maiorano, Jr.

Aero Plating was involuntarily dissolved on December 1, 1980, for failure to file an annual report and pay the annual franchise tax required by state law. 6/ It was not reinstated until August 31, 1984. 7/ Respondents contend that during the period it was dissolved, Aero Plating operated as a de facto corporation so as to shield Mr. Maiorano, Jr., from any individual liability. The argument is without merit. Mr. Maiorano, Jr. is the sole stockholder of the corporation. 8/ It is clear from the

6/ Plaintiff's Exh. 26.

7/ Tr. 510.

8/ Tr. 455.

entire record in this proceeding that he not only made the decisions with respect to the operations of the company but also was very much involved in carrying them out. Mr. Maiorano, Jr. then is plainly an "operator" of the facility as defined in the RCRA regulations, and as such personally liable for the violations. 9/

The EPA also contends that even under Illinois law, reinstatement of the corporate charter would not absolve Mr. Maiorano, Jr. from personal liability, citing Estate of Plepel v. Industrial Metals, Inc., 450 N.E. 2d 1244 (1st App. Dist. 1983). 10/ The test therein enunciated of whether an individual acting for a defective corporation becomes personally liable seems to depend on whether the party asserting liability intended to make the individual personally liable. 11/ Under such a test, if during the period that Aero Plating was not legally incorporated, the State and the EPA still dealt with Aero Plating as a corporate entity, Mr. Maiorano, Jr. presumably would be able to escape individual liability. The EPA appears to ignore that issue and rest its argument solely on the fact that the corporation had been involuntarily dissolved. In any event, Estate of Plepel was

9/ "Operator" is defined to mean "the person responsible for the overall operation of a facility." 40 C.F.R. 260.10. This clearly fits Maiorano, Jr.'s relationship to Aero Plating. Such administrative construction of a statutory term is, of course, entitled to great weight. Chevron U.S.A. v. Natural Resources Defense Council, 467 U.S. ___, 81 L.Ed.2d 694, 703-04 (1984), Udall v. Tallman, 380 U.S. 1, 16 (1965). Since the Illinois program was approved as "substantially equivalent" to the Federal program (47 Fed. Reg. 21045 (May 17, 1982)), it is presumed that the Illinois regulations, although not always as specific, are to be construed the same as the Federal. See 35 Ill. Adm. Code 702.109. Certainly, I have found nothing to the contrary in the State regulations nor has any provision in the regulations or any case been cited to me to indicate otherwise.

10/ Estate of Plepel is attached to Complainant's response to motion to strike complaint filed November 15, 1984, in the pleadings file.

11/ Estate of Plepel, 450 N.E. 2d at 1247.

an action for debt and would not necessarily apply here because the liability involved, creating an environmentally hazardous condition, is more like a tort against the public, and the general rule appears to be that corporate officials who participate in a tort are jointly liable with the corporation for the injury caused. Escude Cruz v. Ortho Pharmaceutical Corp., 619 F.2d 902, 907 (1st Cir. 1980), New York v. Shore Realty Corp., 759 F.2d at 1032, 1051 (2d Cir. 1985). ^{12/} Liability here, however, is predicated upon the provisions of RCRA and the regulations issued thereunder, and not upon general State law regarding the personal liability of officers of de facto corporations.

It is found, accordingly, that Mr. Maiorano, Jr. is personally liable for the violations, and for the penalty exacted for them.

The Personal Liability of Louis Maiorano, Sr.

Louis Maiorano, Sr. is the owner of the land on which Aero Plating was located and the building in which it was housed. As such he is an owner or at least part owner of the facility. ^{13/} The performance standards authorized by RCRA, Section 3004 (which includes the interim status requirements) apply to both owners and operators of facilities, as do also the

^{12/} Respondents says Estate of Plepel is not applicable since the case imposes personal liability only where reinstatement would substitute worthless corporate liability for valuable personal liability, and that would not be true here since assertedly Maiorano, Jr. has no more assets than the corporation. Answer brief at 9. The evidence of Mr. Maiorano, Jr.'s financial condition does not support a finding that his financial resources are as limited as Respondents claim.

^{13/} See definition of "facility" in 40 C.F.R. 260.10, and definition of "Hazardous Waste Management Facility," 35 111. Adm. Code 702.110.

permitting requirements of RCRA, Section 3005. The EPA has construed these provisions as making the owner and operator of a facility jointly and severally responsible for carrying out the requirements of the hazardous waste regulations and for obtaining a permit. 14/ As an administrative construction it is again entitled to great weight. 15/ In short, Mr. Maiorano, Sr.'s personal liability does not rest upon the extent to which he actively participated in the operation of the facility or even knew of the violations, but on his ownership of the facility. 16/ The extent to which he actively participated in the facility's operation, however, is relevant in determining the appropriate penalty to be assessed against him. 17/

The Reasonableness of the Penalty

The EPA has provided a detailed justification of how the penalty conforms with the EPA's RCRA Civil Penalty Policy, taking into account the seriousness of the violations, as determined by their potential harm and the extent they deviate from regulatory requirements. 18/

14/ See 47 Fed. Reg. 32039 (July 23, 1982), where the EPA explained why it requires the signature of both the owner and operator on a permit application. The only instance where the EPA would not hold the owner jointly and severally liable is where the owner holds only bare legal title for the purpose of providing security for a financing agreement. See 45 Fed. Reg. 74490 (November 10, 1980). There is no evidence here that Mr. Maiorano, Sr.'s ownership was of this nature.

15/ See supra at 14, n. 9.

16/ The case of Alton & Southern NY Co. v. Illinois Pollution Control Board, 12 Ill. App. 3d 319, 297 N.E. 2d 762 (5th App. Dist. 1973), relied on by Respondents is not in point because it does not deal with liability under RCRA.

17/ See infra at 20.

18/ Complainant's brief in support of proposed order at 16-40.

The potential harm created by the violations, surely a reasonable factor in determining the seriousness of the violation, is explained by Dr. Homer, an expert in the assessment of the risks associated with hazardous waste sites. 19/ What is missing, however, is some firm evidence showing precisely what quantities of hazardous waste were involved and for what periods of time. This is a factor which is also to be considered in the potential for harm. 20/ The notification of hazardous waste activity and Part A permit application are of primary importance to the regulatory purposes of RCRA, and the proposed penalty of \$17,000 for failure to comply with these requirements should stand. I find, however, that the penalty for the remaining violations should be reduced to \$19,500, making a total assessed penalty of \$36,500. 21/

Respondents argue that there is no evidence establishing the duration of the violations charged. Drums of mud from the basement observed during the January 1984 inspection were found to contain cyanide, a hazardous constituent of F006 waste (waste water treatment sludges from electroplating operations) and F009 waste (spent stripping and cleaning bath solutions from electroplating operations). 22/ The evidence indicates

19/ Tr. 283-303.

20/ RCRA Civil Penalty Policy, Plaintiff's Exh. 69, at 6.

21/ In effect this has meant placing all violations in the minor "potential for harm" category because of the failure of the record to show what actual quantities of hazardous waste have been involved. A penalty of \$3,000 each is assessed for the two violations dealing with closing the facility and \$1500 for each of the remaining violations.

22/ Tr. 274, 277; Plaintiff's Exh. 6 (Sample Nos. X107, X108, X109).

that this waste could have dated back to sludge from electroplating operations found on Aero Plating's basement floor in 1981. 23/ There is no credible evidence indicating it was all of recent origin. 24/ It is found, accordingly, that there have been continuing violations since 1981. 25/

Respondents presumably to show their good faith point out that the four discontinued plating tanks were triple rinsed in order to remove all plating waste before being disposed of, that Aero Plating had a contingency plan after the first inspection and that it also had a personnel training program. 26/ Respondents, however, produced no evidence, such as tests

23/ See Plaintiff's Exhs. 49, 56.

24/ Respondents have been storing hazardous wastes since November 19, 1980, and proffered no evidence showing shipments of listed wastes prior to September 28, 1984. Respondents concede that not all of the shipment on September 28, 1984, was of current (less than 90 days) origin. See Finding of Fact No. 6; Plaintiff's Exhs. 22, 23. If the mud in the drums sampled by the State investigators was a mixture of a listed waste and other waste resulting from a spill instead of being solely a listed waste, it would still be hazardous waste the storage of which was subject to RCRA's requirements. See 40 C.F.R. 261.3(a)(2)(iv), 207.2(c)(3); 35 III. Adm. Code 721.103(b), 725.101(c)(11).

25/ A sample from the debris and sludge pile located in the basement was also found to contain cyanide. Plaintiff's Exh. 6 (Sample No. X118); Plaintiff's Exh. 11 (p. 2 and Photograph No. 12). The most logical explanation for the presence of the cyanide is that the debris and sludge became contaminated with spills and drippings of cyanide bearing materials from the first floor which were occurring as early as 1981. Tr. 225, 478. Maiorano, Jr.'s testimony to the contrary (Tr. 480, 505) is unpersuasive because he never did really explain how the waste pile and mud could have been contaminated with cyanide (see Tr. 484-85). Respondents' proposed finding that the pile of debris and sludge on the basement floor was not contaminated from discharges from the floor above (Answering brief at 1) is rejected for the same reason.

26/ Respondents' answer brief at 1-2. The tanks referred to by Respondents would appear to be those found during the inspection on August 28, 1984, which were discolored by various materials on the outside and which were observed to have sludge and fluid on the inside. See Plaintiff's Exh. 13 (Photograph No. 29); Plaintiff's Exh. 19A; Tr. 117-18.

of samples taken from the tanks and their surfaces, showing that the rinsing of the tanks was sufficient to decontaminate them. The contingency plan was also deficient in several respects. 27/ Thus, these instances do not add up to a persuasive showing of a conscientious effort to achieve full compliance with the requirements.

The remaining questions to be considered are whether any penalty is merited against Mr. Maiorano, Sr. since he assertedly did not know about the violations and had no control over the business of Aero Plating, and whether an adjustment should be made in the case of either Respondent because of his asserted inability to pay the penalty.

With respect to Mr. Maiorano, Sr., the records shows that aside from his ownership of the facility, he also worked as a "consultant" for Aero Plating, that he was present during the inspections of the facility and also at an enforcement meeting with the Illinois Environmental Protection Agency in May 1984. 28/ In addition, he called the State about the disposal of the drums of chromic acid which had been found on a trailer near the facility. 29/ The evidence shows, however, that Mr. Maiorano, Sr. did in good faith transfer the business to his son Louis Maiorano, Jr. in 1979, prior to the time the violations occurred. 30/ It is questionable, then, how much control Mr. Maiorano, Sr. really could exercise over the

27/ Tr. 73-74.

28/ Tr. 63, 66, 111; Complainant's Exh. 13.

29/ Tr. 50-51. The drums of chromic acid, however, are not being questioned as constituting hazardous waste. Tr. 463.

30/ Tr. 413-20.

operations of the business during the time the violations arose, and to what extent he should really be held responsible for such violations. The penalty policy recognizes that lack of willfulness or negligence may justify a reduction in the gravity based penalty. 31/ It could be argued that such a defense is available only to the operator of the facility, and the owner is strictly liable for whatever penalty is assessed against the operator. This seems an unnecessarily harsh construction, however, and since it is not clear that this is what was intended by the penalty policy, it will not be followed here.

As to the failure to file a permit, the owner of the facility is equally responsible with the operator for complying with this requirement. Accordingly, a penalty of \$10,500 is assessed against both. Mr. Maiorano, Sr. must also bear equal responsibility with Mr. Maiorano, Jr. for not properly closing the facility. Accordingly, a penalty of \$6,000 is also assessed against both for these violations. 32/ As to the remaining violations, Mr. Maiorano, Jr. must really bear the primary responsibility for them. Accordingly, the penalty against Mr. Maiorano, Sr. for these violations is reduced to \$2,000. A further reduction is not warranted because Mr. Maiorano, Sr. undoubtedly knew generally how the business was being operated and his relationship as owner of the property and creditor precludes assuming that he had no say whatever on how the business was being operated. Thus, the penalty to be assessed against Mr. Maiorano, Sr.

31/ Plaintiff's Exh. 69 at 17-18.

32/ See supra at 17, n. 21.

for which he will be jointly and severably liable with Mr. Maiorano, Jr. is \$18,500.

Also to be considered is the ability of Mr. Maiorano, Sr. to pay the penalty assessed herein. Contrary to what Respondents argue (answering brief at 8), the burden rests upon Respondent to establish his inability to pay. 33/ Since the Aero Plating operation has been closed, there is no concern here about whether the penalty assessed would put the company out of business. The evidence submitted by Mr. Maiorano, Sr. does not demonstrate that he would have insufficient assets and income to pay the \$18,500 penalty, if not in one sum, than at least by installments or deferred payments, even assuming he will still have to pay closing costs in some unspecified amount. 34/

In the case of Mr. Maiorano, Jr., the only adjustment that would be warranted would be his asserted inability to pay the penalty. Mr. Maiorano, Jr., has furnished some financial data which is sufficient to merit a reduction of the penalty to \$22,000 (a reduction of approximately 40%), having in mind that Mr. Maiorano, Jr. would also be jointly responsible for closing the facility. 35/

33/ See RCRA Penalty Policy, Plaintiff's Exh. 69 at 20. Placing the burden on Respondent is in accordance with the general rule that the burden should be borne by the one naturally possessed of the relevant evidence. Commonwealth of Puerto Rico v. Federal Maritime Commission, 468 F.2d 872, 881 (D.C. Cir. 1972), United States v. Continental Insurance Co., 776 F.2d. 962, 964 (11th Cir. 1985).

34/ Tr. 447-51, 452.

35/ Respondents Exh. 7. The information furnished in Respondents' prehearing exchange was also considered.

Finally, the EPA in its compliance order would require Respondents to account for their disposal of hazardous waste since November 19, 1980. It is doubtful whether Respondents really have the records that would enable them to do so, and, accordingly, the provision is stricken from the order.

ORDER 36/

Pursuant to the Solid Waste Disposal Act, as amended, Section 3008, 42 U.S.C. 6928, the following order is entered against Respondents, Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr.:

I.(a) A civil penalty of \$18,500 is assessed Mr. Maiorano, Sr. and Mr. Maiorano, Jr., for violations of the solid Waste Disposal Act found herein. Mr. Maiorano, Sr. and Mr. Maiorano, Jr. shall be jointly and severally liable for the payment of said penalty. An additional civil penalty of \$3,500 is assessed against Mr. Maiorano, Jr. for said violations.

I.(b) Payment of the full amount of the civil penalty assessed shall be made within sixty (60) days of the service of the final order by submitting a certified or cashier's check payable to the United States of America and mailed to:

EPA - Region V
(Regional Hearing Clerk)
P.O. Box 70753
Chicago, IL 60673

36/ Unless an appeal is taken pursuant to the Rules of Practice, 40 C.F.R. 22.30, or the Administrator elects to review this decision on his own motion, the Initial Decision shall become the final order of the Administrator. See 40 C.F.R. 22.27(c).

If prior to the due date of the payment of the penalty, the Regional Administrator has approved a delayed payment schedule or payment under an installment plan with interest for either Respondent, then payment by such Respondent shall be made according to the schedule or installment plan approved by the Regional Administrator.

II. The following compliance order is also entered against Respondents Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr.:

1. Respondents shall within thirty (30) days of issuance of this Order cease all treatment, storage, or disposal of hazardous waste at the facility except in complete compliance with the Standards Applicable to Generators of Hazardous Waste and Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, 35 Ill. Adm. Code Part 725;

2a. Respondents shall submit to the EPA a closure plan for the facility which is approved by the EPA as meeting the standards for such plans contained in 35 Ill. Adm. Code § 725.210, and shall detail the activities to be accomplished and that have already been accomplished by the Respondents to remove and properly dispose of or otherwise handle the hazardous waste at the facility. Said plan must be submitted within thirty (30) days from service of this Order, unless additional time is allowed by the EPA.

b. Within 30 days of EPA approval of the closure plan, Respondents shall complete closure of the facility, in accordance with the approved closure plan and shall submit a certification of closure, as required by 35 Ill. Adm. Code § 725.215.

3. Respondents shall comply immediately with the following requirements:


- a. Prepare manifests prior to the off-site transportation of hazardous waste as required by 35 Ill. Adm. Code § 722.120(a).
- b. Package hazardous wastes according to applicable Department of Transportation regulations (49 C.F.R. Parts 173, 178 and 179) prior to transportation off-site as required by 35 Ill. Adm. Code §722.130.
- c. Label each drum of hazardous waste in accordance with applicable Department of Transportation regulations (40 C.F.R. Part 172) prior to transportation off-site as required by 35 Ill. Adm. Code §722.131.
- d. Prior to shipping hazardous waste off-site mark each container of 110-gallon capacity or less with the following words as required by 35 Ill. Adm. Code § 722.132(b):

"HAZARDOUS WASTE----Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address _____
 Manifest Document Number _____

- e. Offer the transporter placards according to Department of Transportation regulations (49 C.F.R. Part 172, Subpart F) as required by 35 Ill. Adm. Code § 722.133.

4. Respondents shall, within forty-five (45) days of entry of this Order, provide EPA with a full accounting of all hazardous waste disposed from the facility since November 19, 1980, including quantity and chemical composition of the waste, and identity of the hauler and disposal facility, if any.



Gerald Harwood
Administrative Law Judge

DATED: February 13, 1986
Washington, D.C.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Office of Administrative Law Judge

Mail Code A-110

April 15, 1985

OFFICE OF
THE ADMINISTRATOR

CERTIFIED MAIL--RETURN RECEIPT REQUESTED

Babette J. Neuberger, Esquire
Office of Regional Counsel
U.S. EPA, Region V
230 South Dearborn Street
Chicago, IL 60604

Bertram A. Stone, Esquire
Stone, Pogrund & Korey
221 N. LaSalle Street, 28th Floor
Chicago, IL 60601

Subject: Aero Plating Works
Docket No. V-W-84R-071-P

To the Parties:

As you have been previously notified, I have been designated to preside in this proceeding under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), Section 3008, 42 U.S.C. 6928 (Supp. V, 1981).

The rules of practice governing these proceedings, 40 C.F.R. 22.18(a), express Agency policy concerning settlement, and the parties may be attempting to settle this matter. Counsel for Complainant is directed to file a statement on or before May 16, 1985, as to whether this matter has been settled, or the status of settlement negotiations. If the matter is not settled by that date, I intend to accomplish some of the purposes of a prehearing conference by this letter as permitted by the rules of practice, 40 C.F.R. 22.19(e).

Accordingly, it is directed that the following prehearing exchange take place:

By Complainant and Respondent

1. As required by Section 22.19(b) of the rules, each party shall submit the names of the expert and other witnesses intended to be called at the hearing with a brief narrative summary of their expected testimony, and copies of all documents and exhibits intended to be introduced into evidence. The documents and exhibits shall be identified as "Complainant's" or "Respondent's" exhibit as appropriate, and numbered with Arabic numerals (e.g., Complainant's Ex. 1).
2. Each party shall submit its views as to the place of hearing. See Section 22.21(d) and 22.19(d) of the rules.

To the extent not covered by the foregoing, the following should also be submitted:

By Complainant

1. Submit copies of the inspection reports. *Exs 23, 11*
2. State Complainant's position to Respondent's claim that Louis J. Maiorano, Sr. has been improperly pleaded.
3. Submit copies of the IEPA's Compliance Inquiry Letter dated September 21, 1983, and Enforcement Notice Letter dated March 7, 1984. *Ex 7, reference held on 3/7/84 Enforce. Notice letter dated 2/22/84 Ex 59.*
4. Show how the proposed penalty is reasonable taking into account the seriousness of the alleged violation and the good faith efforts to comply with the applicable requirements.

By Respondent

The file contains information that Respondent was dissolved on December 1, 1980, and not reinstated until August 31, 1984. If Respondent contends that these dates are incorrect, state what the dates should be and the factual basis for Respondent's position.

If the case is not settled, responses to the above should be made not later than June 6, 1985. The parties will then have until June 16, 1985, to reply to statements or allegations of the other contained in the responses to this letter. The original of the responses and replies shall be sent to the Regional Hearing Clerk, and copies, with any attachments, shall be sent to the opposing party and to this office.

Upon receipt of the requested responses and replies, consideration will be given to whether further correspondence is desirable or whether the matter will be scheduled for hearing.

Sincerely,

Gerald Harwood
Gerald Harwood
Administrative Law Judge

I hereby certify that the original of this letter re: Aero Plating Works, dated 4/15/85, was mailed to the Regional Hearing Clerk, U.S. EPA, Region V, and copies were sent certified mail, return receipt requested, to counsel for Complainant and Respondent in this proceeding on this 15th day of April 1985.

Dottie Woodward
Dottie Woodward
Secretary to Judge Harwood

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF)

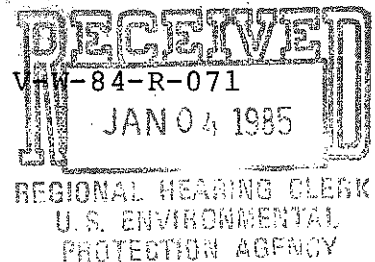
LOUIS J. MAIORANO, SR.)

LOUIS J. MAIORANO, JR.)

d/b/a AERO PLATING WORKS)

Respondents)

Docket No. VW-84-R-071



FINDINGS AND ORDER

Having reviewed and considered Respondents' Motion to Strike the Complaint and Complainant's Response thereto, I hereby make the following findings in the above-captioned matter:

1. that Respondent's Motion to Strike raises numerous issues of disputed fact which are appropriately raised in an Answer to the Complaint as alleged defenses, but are inadequate as grounds for a Motion to Strike;


2. that Complainant's Response to the Motion to Strike serves to emphasize that factual issues are in dispute;

3. that the proper vehicle for resolution of the dispute is the ordinary complaint, answer, and hearing procedure anticipated by the Consolidated Rules of Practice; and

4. that Respondent is not entitled to relief as a matter of law.

WHEREFORE, I hereby order that Respondent either file an Answer to the Complaint, and/or take other action consistent with the notices contained on pages 12 through 14 of the original Complaint in this case, no later than February 6, 1985.

JANUARY 4th, 1985.
Dated


VALDAS V. ADAMKUS
REGIONAL ADMINISTRATOR
AS PRESIDING OFFICER

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF)
)
LOUIS J. MAIORANO, SR.) Docket No. V-W-84-R-071
LOUIS J. MAIORANO, JR.)
d/b/a AERO PLATING WORKS)
)
Respondents)

CERTIFICATE OF SERVICE

I certify that on January 4, 1985, an original and one copy of the Regional Administrator's Findings and Order on the above-captioned action was hand delivered to:

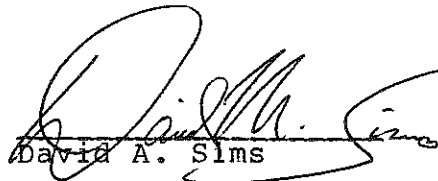
Mary Langer
Regional Hearing Clerk
U.S. Environmental Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604

and one copy was hand delivered to:

Ms. Babette J. Neuberger
Office of Regional Counsel
U.S. Environmental Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604

and a copy was sent by regular U.S. mail, postage prepaid, to:

Bertram A. Stone, Esq.
Stone, Pogrund & Korey
221 North LaSalle Street, 28th Floor
Chicago, Illinois 60601


David A. Sims

10/15/84

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF

LOUIS J. MAIORANO, SR.,
LOUIS J. MAIORANO, JR.,
d/b/a AERO PLATING WORKS
1860 NORTH ELSTON AVE.
CHICAGO, ILLINOIS 60622
ILD 005125836

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Docket No. V-W-84R-071
Response to Complaint

MOTION TO STRIKE COMPLAINT

Now comes Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr. by their attorneys, Stone, Pogroni & Korey, and for response to the Complaint in the above entitled cause allege as follows:

1. That neither of the Respondents, Louis J. Maiorano, Sr. or Louis J. Maiorano, Jr., were or are doing business as Aero Plating Works as alleged in the preamble or determinations of the Complaint.

2. That Aero Plating Works, Inc. was and is a corporation duly organized and existing under the laws of the State of Illinois.

3. That Louis J. Maiorano, Sr., was not a shareholder or officer of Aero Plating Works, Inc. since 1980.

4. That Louis J. Maiorano, Jr. is the sole shareholder and President of said corporation and is not nor ever has been conducting a business as an individual under the trade name and style of Aero Plating Works.

WHEREFORE, Respondents, Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr., pray that the Complaint and Compliance Order be stricken.

LOUIS J. MAIORANO, SR. AND
LOUIS J. MAIORANO, JR.
By: STONE, POGRUND & KOREY

Per 

Their Attorneys

Dated this 15th day of October, 1984.

STONE, POGRUND & KOREY
ATTORNEYS AT LAW
221 North LaSalle St. - 28th Floor
Chicago, Illinois 60601

Mr. Gary King
Senior Attorney
Illinois EPA, DLPC
2200 Churchill Road
Springfield, Illinois 62607

Dear Mr. King:

Aero Plating Works

Aero Plating has operated as a treatment/storage/disposal facility without having achieved interim status.

Feel free to contact Wayne Pearson, at (312) 886-1772, if you have any questions regarding this matter.

Sincerely yours,

ORIGINAL SIGNED BY
WILLIAM H. MINER

William H. Miner, Chief
Technical, Permits, and Compliance Section

cc: Don Gimbel, IEPA

5HW-12:W. PEARSON:fr:9/11/84

INITIALS *F.A.* *10/11/84* *9/12/84* *9/13/84* *9/13/84* *WJH* *9/13/84*



HAZARDOUS WASTE MANIFEST

(As Required By The Alabama Department of Environmental Management)

Please print or type. (Form designed for use on elite (12-pitch) typewriter.)

Form Approved OMB No. 2000-0404 Expires 7-31-86

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator's US EPA ID No.	Manifest Document No.	2. Page 1 of 1	Information in the shaded areas is not required by Federal law.	
3. Generator's Name and Mailing Address AERO PLATING 1860 N. ELLISON BLVD MONTICELLO AL 35459				A. State Manifest Document Number CWMA 162556		
4. Generator's Phone (314) 276-3300				B. State Generator's ID 0316-3001		
5. Transporter 1 Company Name CHEMICAL WASTE MANAGEMENT, INC.				C. State Transporter's ID 0075		
6. US EPA ID Number 22-D-0051				D. Transporter's Phone (205) 276-1960		
7. Transporter 2 Company Name				E. State Transporter's ID		
8. US EPA ID Number				F. Transporter's Phone		
9. Designated Facility Name and Site Address CHEMICAL WASTE MANAGEMENT, INC. Emelle Facility Alabama Highway 17 at Mile Marker 163 Emelle, Alabama 35459				G. State Facility's ID 1011170001		
10. US EPA ID Number A.L.D.O.O.O.6.2.2.4.6.4				H. Facility's Phone 205/652-9721		
11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number)		12. Containers No.	Type	13. Total Quantity	14. Unit Wt/Vol	15. Waste No.
a. HAZARDOUS WASTE LIQUID, NOS NA 9189-ORME CWM Profile Number RVPD0275R			DM			F006
b. CWM Profile Number						
c. CWM Profile Number						
d. CWM Profile Number						
J. Additional Descriptions for Materials Listed Above LIQUID				K. Handling Codes for Wastes Listed Above a. c. b. d.		
15. Special Handling Instructions and Additional Information						
16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations.						
Printed/Typed Name LOUIS J. MAIGRAUD JR.		Signature Louis J. Maigrand Jr.		Date Month Day Year 9 28 84		
17. Transporter 1 Acknowledgement of Receipt of Materials		Signature Kenneth Lenderink		Date Month Day Year 9 28 84		
18. Transporter 2 Acknowledgement or Receipt of Materials		Signature		Date Month Day Year		
19. Discrepancy Indication Space						
20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in item 19.						
Printed/Typed Name		Signature		Date Month Day Year		



HAZARDOUS WASTE

CHEMICAL WASTE MANAGEMENT, INC.

4300 W. 123rd Street

Alsip, Illinois 60658

Phone: (312) 396-1060

FED. I.D. No. ILD000806604

I.L.S.W.H. No. 0075

No. 73874

MO DAY YR

09 28 84

P. O. No.

SHIPPER (from) Aaro Plating PHONE: () CONTACT:

IL. GEN. CODE No.: FED. I.D. No. ILD005125836

ADDRESS 1860 N. Elston Ave. - Chicago STATE IL COUNTY

DESTINATION (to) Chemical Waste Management of Alabama SITE RMEML

IL. SITE CODE No.: 9011190001 FED. I.D. No. ALD000622464

ADDRESS Highway 17 @ MM 163 - Emelle STATE ALA COUNTY

No. of Units	HM	Description and Classification	Total Weight	Permit #	Exp. Date	Profile	Manifest
49	X	Hazardous Waste Liquid, N.O.S.			RVDD27582		162556
		ID No. <u>HA 9189</u>					
		Hazard Class <u>ORM-E</u>					
		USEPA Code No. : <u>F006</u>					
		(<u>Nickel Sludge</u>)					

CHEMTREC (800) 424-9300

This is to certify that the above named are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation, and the Environmental Protection Agency.

Start Load 7:30 AM End Load 9:30 AM Total Time 2 hrs

Customer Signature [Signature]

Driver Instructions [Signature]

Left Site		Comments	Start Mileage	
Start Load			Finish Mileage	
End Unloading			Total Return Mileage	
Total Time				

Tractor No. 1025 Trailer No. 3029

Copies to: Gold-Shipper/Pink-Disposal Site/Canary-Hauler/White-Hauler

ACTION BY UNANIMOUS WRITTEN CONSENT
OF THE BOARD OF DIRECTORS OF
AERO PLATING WORKS, INC.

The undersigned, being all of the members of the Board of Directors of AERO PLATING WORKS, INC., do hereby adopt the following resolution:

WHEREAS, this company is currently indebted to LOUIS J. MAIORANO in the amount of Three Hundred Twenty-Four Thousand Two Hundred Forty-Eight and 19/100ths Dollars (\$324,248.19); and

WHEREAS, LOUIS J. MAIORANO has offered to transfer to the capital of the company One Hundred Twenty-Five Thousand Nineteen and 33/100ths Dollars (\$125,019.33) in cancellation of a portion of the indebtedness of the company to LOUIS J. MAIORANO in like amount; and

WHEREAS, LOUIS J. MAIORANO and the company desire to evidence a portion of the remaining indebtedness to LOUIS J. MAIORANO in the form of the company's note to him in the amount of One Hundred Fifty Thousand and 00/100ths Dollars (\$150,000.00) secured by a chattel mortgage on certain of the assets of the company; and

* WHEREAS, the company and LOUIS J. MAIORANO desire to enter into a consulting agreement; and

* WHEREAS, the company desires to lease certain property commonly known as 1860 North Elston Avenue and 1317-19 North Avenue, Chicago, Illinois from LOUIS J. MAIORANO; and

WHEREAS, LOUIS J. MAIORANO has offered to donate to the capital of this company the nine hundred (900) shares of the capital stock owned by him; and


WHEREAS, EVA D. MAIORANO has offered to donate to the capital of the company the one (1) share of the capital stock owned by her;


NOW, THEREFORE, be it resolved:

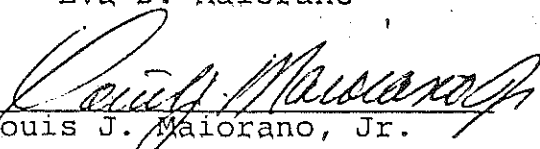
1. The offer of LOUIS J. MAIORANO to contribute to the capital of the company the sum of One Hundred Twenty-Five Thousand Nineteen and 33/100ths Dollars (\$125,019.33) in the form of a reduction of the indebtedness of the company to LOUIS J. MAIORANO in like amount is hereby accepted and the same amount shall be added to the paid-in-suplus of the company.

2. The offer of LOUIS J. MAIORANO to contribute to the capital of the company the nine hundred (900) common shares of the company owned by him is hereby accepted and said shares shall remain in the treasury of the company as treasury shares until the further action of the Board of Directors.
3. The offer of EVA D. MAIORANO to contribute to the capital of the company the one (1) common share of the company owned by her is hereby accepted and said share shall remain in the treasury of the company as treasury shares until the further action of the Board of Directors.
4. To memorialize a portion of indebtedness of the company to LOUIS J. MAIORANO, the company shall execute and deliver to LOUIS J. MAIORANO its collateral note secured by the assets of the company listed therein, which such note is attached hereto as Exhibit A.
- ✓ 5. This company shall lease the property commonly known as 1860 North Elston Avenue and 1317-19 North Avenue, Chicago, Illinois from LOUIS J. MAIORANO for a term ending December 31, 1982, on such terms and conditions as set forth in such lease a copy of which is attached hereto as Exhibit B.
- copy 1
consulting
agreement 2 * 6. The company shall enter into a consulting agreement with LOUIS J. MAIORANO in the form of consulting agreement attached hereto as Exhibit C.
7. The principal officers of the company shall execute such notes, leases, contracts, UCC Financial Statements and reports to the Secretary of State of Illinois as required by law, to effectuate the foregoing resolution as such officers may deem necessary and proper.

Dated: January 2, 1979.


Louis J. Maiorano


Eva D. Maiorano


Louis J. Maiorano, Jr.

(B) Any notice to be given hereunder shall be conclusively deemed to have been given when placed in the United States mail, with proper first class postage prepaid, addressed to Company at 1860 N. Elston Avenue, Chicago, Illinois, and to the Consultant at _____

_____ ; provided, however, that the address of each of the parties hereto may be changed from time to time by notice to the other given in the manner herein provided.

(C) This Agreement shall be governed and construed in accordance with the laws of Illinois. The invalidity of one or more portions hereof shall not affect the full validity and enforceability of the remainder. Amendments hereof shall be effective only when in writing and signed by Consultant and by an officer of the Company.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first above written.

Louis J. Maiorano

AERO PLATING WORKS, INC.

By _____

Louis J. Maiorano
President

ATTEST:

Secretary

SEP 10 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Louis J. Maiorano, Jr.
President
Aero Plating Works
422 Hill Valley Street
Palatine, Illinois 60067

V-W- 84 R-071

Re: Complaint and Compliance Order
Aero Plating Works
ILD 005126836

Dear Mr. Maiorano:

Enclosed please find a Complaint and Compliance Order which specifies this Agency's determination of certain violations by Aero Plating Works of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. §6901 et seq., based on inspections of the facility at 1860 N. Elston Avenue, Chicago, Illinois 60622.

The Complaint and Compliance Order states the reasons for such a determination, establishes a compliance schedule and assesses a civil penalty for the violations as set forth in the Complaint and Compliance Order. This Complaint and Compliance Order is issued pursuant to Section 3008 of RCRA, 42 U.S.C. §6528.

Accompanying the Complaint and Compliance Order is a Notice of Opportunity for Hearing. Should you desire to contest the allegations herein, and the assessed penalty, a written request for a hearing is required to be filed with the Regional Hearing Clerk, U.S. EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604, within 30 days from receipt of this Complaint and Compliance Order. A copy of your hearing request should also be sent to Ms. Babette J. Neuberger, Office of Regional Counsel, U.S. Environmental Protection Agency, at the same address.

Regardless of whether you choose to request a hearing within the prescribed time limit following service of the Complaint and Compliance Order, you are extended an opportunity to request an informal settlement conference.

If you have any questions or desire to request an informal conference, for purposes of settlement with Waste Management Division staff, please contact Mr. Wayne Pearson, Waste Management Division, Technical, Permits, and Compliance Section, 230 South Dearborn Street, Chicago, Illinois 60604, at (312) 886-1772.

Sincerely,

Basil G. Constantelos, Director
Waste Management Division

Enclosures

cc: Bill Radlinski, IEPA Springfield

bcc: Office of Regional Administrator
Denise Reape, TPCS
Don Gimbel, IEPA Maywood
Regional Hearing Clerk
Frank Biros
Wayne Pearson, WMS
Lynn Crivello, IEPA Maywood

BW:W.PEARSON:ns:9/4/84



Environmental Protection Agency

1701 First Avenue, Maywood, IL. 60153

March 20, 1984

SUBJECT OF INSPECTION

03162301- Cook County- Chicago/ Aero Plating Inc.
ILD005125836

On March 20, 1984, Lynn Crivello, Mary Schroeder, and Rich Finley conducted an inspection of this facility. The following conditions were noted:

BASEMENT

- X 1-55 gal. drum of acid
- Loose dirt, wood, and bricks
- Evidence of water seeping into building

CHEMICAL ROOM

- X 1-55 gal. drum of anode bags
- X 3-55 gal. drums of white powder for brass
- 1-15 gal. pail of green dirt from floor
- X 10 gal. of white beads
- 1-15 gal. drum of nickle electrolite
- X 15 gal. plastic drum of unknown
- X 30 gal. drum (100 lbs.) Sodium Copper Cyanide
- X 15 gal. white powder
- 1-55 gal. drum $\frac{1}{2}$ full of dark green solid
- X 1-55 gal. drum $\frac{1}{2}$ full of white solid and amber liquid
- 6-55 gal. drum $\frac{1}{2}$ full of sludge
- 4-5 gal. containers of wetting agent
- X 15 gal. pail of white powder
- 1-55 gal. drum of dirt
- X 5 gal. of nickle britener
- 1-55 gal. drum of Vulcan
- X 15 gal. white powder
- 20 lbs. green powder
- 1-55 gal. fiber drum $\frac{1}{2}$ full of solid
- X 1-55 gal. drum $\frac{1}{2}$ full of white sludge
- X 2-blue rubber drums of acid water
- X 2-55 gal. drums of acid water
- X 6-30 gal. drums of acid water
- X 1-15 gal. fiber drum $\frac{1}{2}$ full of white powder
- X 1-30 gal. drum one-third full of white powder
- 8-cloth bags of nickle salts
- 1-55 gal. drum one-fifth full of green powder
- 1-55 gal. drum $\frac{1}{2}$ full of rubbish
- 1-55 gal. drum $\frac{1}{2}$ full of green/brown sludge
- X 1-15 gal. wooden drum of sulfuric acid

*description
by drum
labels or
visual
inspect*

Chemical Room cont.

- X 4-55 lbs. wooden acid containers
- X 20 gal. white powder
- 1-55 gal. drum (fiber) $\frac{1}{2}$ full of nickle chloride
- 1-55 gal. red fiber drum one-third full of unknown
- 1-55 gal. fiber drum $\frac{1}{2}$ full of unknown
- 1-55 gal drum $\frac{1}{2}$ full of unknown
- 1-15 gal. fiber drum unmarked
- 3-55 gal drum marked nicklux
- X 1-55 gal. fiber drum full of liquid
- 2-55 gal drum $\frac{1}{2}$ full green/brown sludge
- 10-55 gal. drum $\frac{1}{2}$ full sludge
- 1-55 gal drum of oil
- 1-15 gal fiber drum of wetter

STORAGE-DOCK AREA

- 1-55 gal. drum brown sludge 2" deep
- X 1-50 gal. rubber tank with 19 gal chromic acid
- X 1500 gal. tank with 2" liquid, small amount of sludge
- 1500 gal. tank with sludge on sides and botton. Less than $\frac{1}{2}$ "
- 1500 gal. tank with approx. 25 gal. sludge
- 3000 gal. tank with approx. 165 gal. nickle sludge
- 4-55 gal. drum of dirt from floor
- 3-30 gal. drum of dirt from floor
- 11-55 gal. drum of nickle sludge
- 3-55 gal drum chrome sludge, 1 full, 2- $\frac{1}{2}$ full
- X 1-55 gal. drum chromic acid
- 1-55 gal drum dirt
- 2-55 gal. drum of acid water
- X 1 55 gal. drum of muriatic acid
- X 1-30 gal. drum of brownish water
- 1-55 gal. fiber drum of soap/cleaner
- 1-55 gal. drum of oil
- 1-55 gal. drum of descaler
- X 5-55 gal. drum of chromic acid
- 2-30 gal. drum of dirt and trash $\frac{1}{2}$ full
- 1-55 gal. drum of trash $\frac{1}{2}$ full
- 1-55 gal. drum nickle sludge
- 9-55 gal. drum of dirt
- X 1-30 gal plastic drum of chromic acid
- 1-30 gal. container of floor dry

RECEIVED
APR 04 1984

WASTE MANAGEMENT
BRANCH

noted

SHW-12

JAN 27 1984

Mr. Thomas Cavanagh
Manager, FDS, DLPC
Illinois EPA
2200 Churchill Road
Springfield, Illinois 62706

Re: Request for ISS report
Aero Plating Works, Chicago, IL.
ILD 006125836

Dear Mr. Cavanagh:

This is a request for a copy of the ISS inspection report for the inspection of Aero Plating Works conducted by your Northern Region staff on January 24, 1984. We would also like a copy of the reports of chemical analyses of the 17 samples collected that day, as soon as the analyses are completed. Thank you for your cooperation in this matter.

Sincerely,

Robert L. Stone
State Implementation Officer

cc: Bill Radlinski, IEPA

bcc: Ken ^{Beckley} Hensley, IEPA

SHW:B.STONE:ad 1/27/84 Disk #4

INITIALS	TYPEST <i>L.R.</i>	AUTHOR <i>[Signature]</i>	WMB CHIEF	WMD DIRECTOR
DATE	1-27-84	1-27-84		



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO ATTENTION OF:
5HR-JCK-13

AERO PLATING WORKS
ATTN: ENVIRONMENTAL COORDINATOR
1860 N ELSTON
CHICAGO IL 60622

RE: ILD005125836 172380

1860 N ELSTON
CHICAGO IL 60622

Dear Illinois Hazardous Waste Handler:

Our records indicate that you have not yet submitted a response to the 1989 Waste Minimization Report package sent to you earlier this year.

Under the provisions of 40 CFR 262.41, 264.75 and 265.75 of the Resource Conservation and Recovery Act, you were required to submit your 1989 Waste Minimization Reports by March 1, 1990. If a site-specific extension was requested the due date would have been extended to no later than April 15, 1990. You must complete and submit your Waste Minimization Report to the address specified below.

Call (312) 886-4001 if you did not receive the above-specified package or if you have any questions.

U.S. EPA Region V
RCRA Activities
P.O. Box A-3587
Chicago, IL 60690

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Judy Kertcher".

Judy Kertcher
Acting Associate Director, Office of RCRA
Waste Management Division

203 3



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF

5CS-16

MEMORANDUM

SUBJECT: Recommendation for signature on
Louis J. Maiorano, Sr., an individual;
Louis J. Maiorano, Jr., an individual and
d/b/a Aero Plating Works, Inc.
Chicago, Illinois Litigation Referral

FROM: *[Signature]* Robert B. Schaefer & *M. A. Hale* Basil G. Constantelos
Regional Counsel Director, Waste
Management Division

TO: Valdas V. Adamkus
Regional Administrator

We have reviewed the attached litigation **referral package** and we recommend that you forward this package to U.S. EPA Headquarters by means of the attached memorandum which has been prepared for your signature.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
)
LOUIS J. MAIORANO, SR.)
LOUIS J. MAIORANO, JR.)
d/b/a AERO PLATING WORKS)
 Respondents)

DOCKET NO. V-W-84-R-071

RESPONSE TO MOTION TO STRIKE COMPLAINT

Complainant, Basil G. Constantelos, Director, Waste Management Division, U.S. Environmental Protection Agency-Region V, (EPA) files the following response in opposition to Respondents' motion to strike the complaint:

1. Respondents' motion must be denied because the named individual Respondents were the owners and operators of the Aero Plating Works facility at all times here relevant.

2. In their motion Respondents' erroneously claim that Aero Plating Works "was and is a corporation duly organized and existing under the laws of the State of Illinois and that neither Respondent conducted business in his individual capacity under the name Aero Plating Works." Respondents' claims are completely untrue.

3. While Aero Plating Works was incorporated in the State of Illinois on December 24, 1951 (Attachment 1), on December 1, 1980, the Secretary of State dissolved the corporation pursuant to the Illinois Business Corporation Act, Ill.Rev.Stat. 1933, ch. 32, par.157.82(A), (effective 1974), because the company failed to file an annual report and pay franchise taxes (Attachment 2).

4. The corporation was not reinstated until August 31, 1984, several weeks after the last of the RCRA compliance inspections which form the basis for the pending action.

Respondent Louis J. Maiorano, Jr. reinstated the corporation even though the company had ceased operation and was in the process of selling off its last remaining assets at auction (Attachment 3).

5. Under Illinois law, corporate officers and directors are held personally liable for debts incurred by them following the dissolution of the corporation even where the corporation is subsequently reinstated. The State of Illinois will not permit officers and directors to absolve themselves of personal liability incurred during the period of dissolution merely by reinstating the corporation at some future date. In the Matter of the Estate of John D. Plepel, et. al., 115 Ill.App.3d 803, 450 N.E.2d 1244 (1983) (Attachment 4). Cf. In the Matter of S & T Terry Contractors, Inc., 6 Bankruptcy Reporter 84 (1980) (Attachment 5).

The courts of other jurisdictions have taken the same position. (See Kessler Distributing Co. v. Neill, (Iowa App. 1982), 317 N.W.2d 519, 522; Poritzky v. Wachtel, (1941) 176 Misc. 633, 27 N.Y.S.2d 316, 317-8).

Furthermore, it has been a longstanding rule in Illinois, that an order dissolving a corporation will not be vacated when the effect is to create a fraud or to raise a defunct corporation, Continental Illinois National Bank & Trust Co. v. University of Notre Dame Du Lac, 326 Ill.App. 567, 63 N.E.2d 127,131 (1945); Kaybill Corporation, Inc. v. Cherne, (1974) 24 Ill.App.3d 309, 320 N.E.2d 598.

6. In the present case the individual Respondents are attempting to shift responsibility for violating state and federal laws onto a defunct corporation in order to avoid incurring substantial statutory penalties for their conduct.

For the foregoing reasons, Complainant respectfully requests the presiding officer to deny Respondents' motion to strike the complaint; and instead, to enter an order requiring Respondents to answer the complaint within twenty days.

Respectfully submitted,

Babette J. Neuberger
Assistant Regional Counsel

CERTIFICATE OF SERVICE

I hereby certify that the original of the RESPONSE TO MOTION TO STRIKE COMPLAINT, including attachments, were filed with the Regional Hearing Clerk for the United States Environmental Protection Agency, Region V, and that copies of same were mailed, by certified mail-return receipt requested, to Bertram Stone, Esq., Stone, Pogrund & Korey, suite 2800, 221 North LaSalle Street, Chicago, Illinois, on this 15th day of November, 1984.

Michelle Radcliffe

P 203 688 947

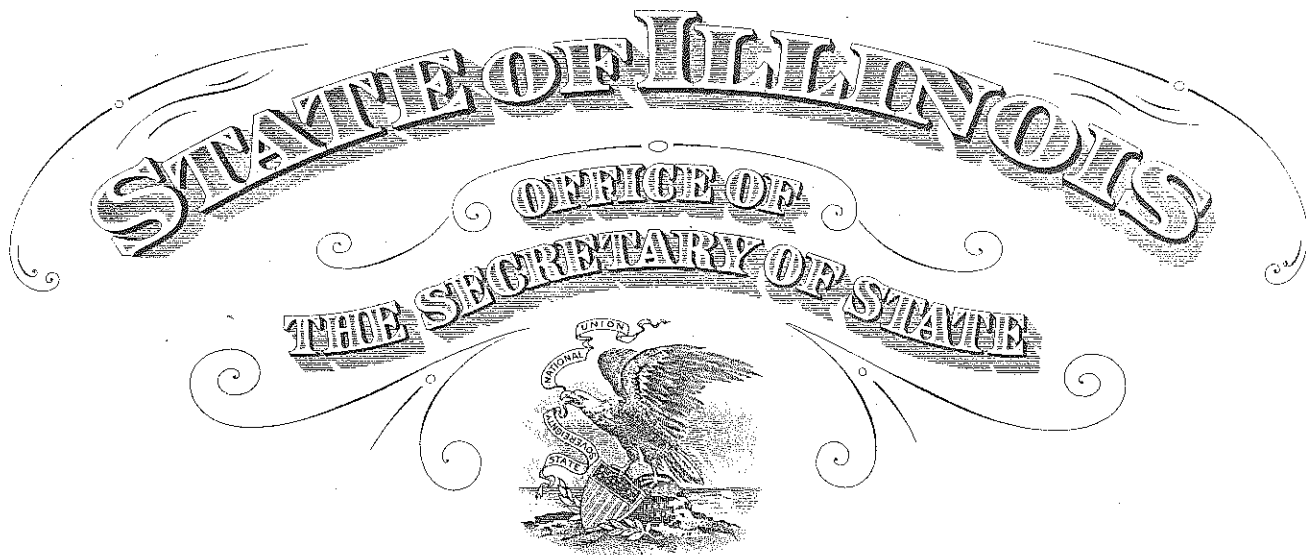
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL
(See Reverse)

SENT TO	
Bertram Stone, Esq. Suite 2800	
STREET AND NO.	
221 N. LaSalle St.	
P.O. STATE AND ZIP CODE	
Chicago, Ill. 60601	
POSTAGE	
CERTIFIED FEE	\$.71
SPECIAL DELIVERY	.75¢
RESTRICTED DELIVERY	¢
CONSULT POSTMASTER FOR FEES	
OPTIONAL SERVICES	
RETURN RECEIPT SERVICE	¢
SHOW TO WHOM AND DATE DELIVERED	¢
SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	.60¢
SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES	\$ 2.06
POSTMARK OR DATE	
CHICAGO, ILL. NOV 15 1984	

50-16

BNEUBERGER:11/15/84:5C-16
PS Form 3800, Apr. 1976



To all to whom these Presents Shall Come, Greeting:

Whereas, Articles of Incorporation, duly signed and verified, of
AERO-PLATING WORKS, INC.

have been filed in the Office of the Secretary of State, on the 24th
day of December A. D. 19 51, as provided by "THE BUSINESS
CORPORATION ACT" of Illinois, in force July 13, A. D. 1933.

Now Therefore, I, EDWARD J. BARRETT, Secretary of State of the State of Illinois,
by virtue of the powers vested in me by law, do hereby issue this certificate of
incorporation, and attach thereto a copy of the Articles of Incorporation
of the aforesaid corporation.

In Testimony Whereof, Thereto, set my hand and cause to
be affixed the Great Seal of the State of Illinois,
Done at the City of Springfield this 24th
day of December A. D. 19 51 and
of the Independence of the United States
the one hundred and 76th.

(SEAL)

Edward J. Barrett

SECRETARY OF STATE.

FORM B

BEFORE ATTEMPTING TO EXECUTE THESE BLANKS BE SURE TO READ CAREFULLY
THE INSTRUCTIONS ON THE BACK THEREOF.

(THESE ARTICLES MUST BE FILED IN DUPLICATE.)

STATE OF ILLINOIS,

COOK COUNTY } ss.

To EDWARD J. BARRETT, Secretary of State:

(Do not write in this space)

Date Paid 12-24-51
Initial License Fee \$ 8.25
Franchise Tax \$ 5.84
Filing Fee \$ 2.00
Clerk [Signature]

We, the undersigned,

Name	Number	Street	Address City	State
Louis J. Maiorano	946	Lilac Lane	Highland Park	Illinois
Paul Rizzo	1944	North Maude	Chicago	Illinois
George Catalano	536	North Springfield Ave.	Chicago	Illinois

being natural persons of the age of twenty-one years or more and subscribers to the shares of the corporation to be organized pursuant hereto, for the purpose of forming a corporation under "The Business Corporation Act" of the State of Illinois, do hereby adopt the following Articles of Incorporation:

ARTICLE ONE

The name of the corporation is: Aero Plating Works, Inc.

ARTICLE TWO

The address of its initial registered office in the State of Illinois is: 1860 North Elston Avenue
Street, in the City of Chicago (22) County of Cook and
(Zone)
the name of its initial Registered Agent at said address is: Louis J. Maiorano

ARTICLE THREE

The duration of the corporation is: Perpetual

1758 11
PAID
DEC 24 1951
Edward J. Barrett
Secretary of State

ARTICLE FOUR

The purpose or purposes for which the corporation is organized are:

1. To engage in the business of chromium plating, metal plating, and the manufacture of chromium plated and metal plated articles.
2. To manufacture, buy, sell, deal in and with, as principal agent, broker, factor or otherwise, goods, wares, merchandise, materials, products, and personal property of every kind and description.
3. To manufacture, originate, acquire, hold, own, develop, use, maintain, sell, lease or in any manner dispose of systems, plans, processes, forms or methods in any way relating to the development and promotion of industrial or business pursuits of any and all kinds.
4. To acquire, hold, use, develop, license and dispose of and otherwise deal in inventions, improvements, patents, processes and copyrights.
5. To manufacture, buy, sell and deal in machinery, equipment, merchandise and supplies pertaining to the aforesaid business and to other industries and businesses.
6. To engage in the manufacture and sale, the buying and selling of chemical products and other materials and compounds used in the fabrication of metals.

ARTICLE FIVE

PARAGRAPH 1: The aggregate number of shares which the corporation is authorized to issue is 1000, divided into no classes. The designation of each class, the number of shares of each class, and the par value, if any, of the shares of each class, or a statement that the shares of any class are without par value, are as follows:

Class	Series (If any)	Number of Shares	Par value per share or statement that shares are without par value
Common		1000	Without Par Value

PARAGRAPH 2: The preferences, qualifications, limitations, restrictions and the special or relative rights in respect of the shares of each class are:

None

ARTICLE SIX

The class and number of shares which the corporation proposes to issue without further report to the Secretary of State, and the consideration (expressed in dollars) to be received by the corporation therefor, are:

Class of shares	Number of shares	Total consideration to be received therefor:
Common	500 1,000	\$ 16,500.00

ARTICLE SEVEN

The corporation will not commence business until at least one thousand dollars has been received as consideration for the issuance of shares.

ARTICLE EIGHT

The number of directors to be elected at the first meeting of the shareholders is: Three (3)

ARTICLE NINE

PARAGRAPH 1: It is estimated that the value of all property to be owned by the corporation for the following year wherever located will be \$ 21,000.00

PARAGRAPH 2: It is estimated that the value of the property to be located within the State of Illinois during the following year will be \$ 21,000.00

PARAGRAPH 3: It is estimated that the gross amount of business which will be transacted by the corporation during the following year will be \$ 70,000.00

PARAGRAPH 4: It is estimated that the gross amount of business which will be transacted at or from places of business in the State of Illinois during the following year will be \$ 70,000.00

<u>Louis J. Maiorano</u>	Incorporators
<u>Paul Rizzo</u>	
<u>George Catalano</u>	
<u>George Catalano</u>	

OATH AND ACKNOWLEDGMENT

STATE OF ILLINOIS,
 COOK }
 County, } ss.
 I, Charles J. Maiorano, a Notary Public do hereby certify that on the
11th day of Dec., 1951, Louis J. Maiorano,
 (Pluses of Incorporators)
Paul Rizzo and George Catalano

personally appeared before me and being first duly sworn by me severally acknowledged that they signed the foregoing document in the respective capacities therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have herunto set my hand and seal the day and year above written.

Place
 Here
 NOTARIAL SEAL

Charles J. Maiorano
 Notary Public

FORM B

ARTICLES OF INCORPORATION

AERO-PLATING WORKS, INC.

The following fees are required to be paid at the time of issuing certificate of incorporation: Filing fee, \$20.00; initial license fee of 50c per \$1000.00 or 1/20 of 1% of the amount of stated capital and paid-in surplus the corporation proposes to issue without further report (Article Six); Franchise tax of 1/20 of 1% of the issued, as above noted. However, the minimum annual franchise tax is \$10.00 and varies monthly on \$20,000 or less, as follows: January, \$15; February, \$14.17; March, \$13.34; April, \$12.50; May, \$11.67; June, \$10.84; July, \$10.00; Aug. \$9.17; Sept. \$8.34; Oct., \$7.50; Nov., \$6.67; Dec., \$5.84; (See Sec. 133, BCA).

In excess of \$20,000.00 the franchise tax per \$1000.00 is as follows: Jan., \$0.75; Feb., .7084; March, .6667; April, .625; May, .5834; June, .5417; July, .50; Aug., .4584; Sept., .4167; Oct., .375; Nov., .3334; Dec., .2917.

All shares issued in excess of the amount mentioned in Article Six of this application must be reported within 60 days from date of issuance thereof, and franchise tax and license fee paid thereon; otherwise, the corporation is subject to a penalty of 1% for each month on the amount until reported and subject to a fine not to exceed \$500.00.

The same fees are required for a subsequent issue of shares except the filing fee is \$1.00 instead of \$20.00.

FILED
 DEC 24 1951

Edward J. Smith
 Sec'y of State

COOK
County

STATE OF ILLINOIS
Office Of
THE SECRETARY OF STATE

3288-240-4
File Number

CERTIFICATE OF DISSOLUTION OF DOMESTIC CORPORATION

WHEREAS it appears that

AERO PLATING WORKS, INC.
% PAUL H VISHNY
30 N LASALLE ST
CHICAGO, ILLINOIS 60602

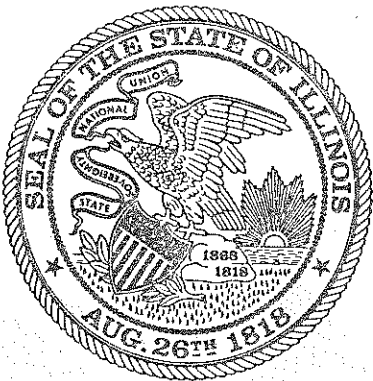
11070
8-31-84

being a corporation organized under the laws of the State of Illinois relating to Domestic Corporations, has failed to FILE AN ANNUAL REPORT AND PAY AN ANNUAL FRANCHISE TAX as required by the provisions of "The Business Corporation Act" of the State of Illinois, in force July 13, A.D. 1933, and all acts amendatory thereof; AND WHEREAS, said acts provided that upon failure to, FILE AN ANNUAL REPORT AND PAY AN ANNUAL FRANCHISE TAX the Secretary of State shall dissolve the corporation pursuant to Section 82A effective July 1, 1974.

NOW THEREFORE, I, Alan J. Dixon, Secretary of State of the State of Illinois, hereby dissolve the said

AERO PLATING WORKS, INC.

in pursuance of the provisions of the aforesaid Act.



IN TESTIMONY WHEREOF, I hereto set my hand and
cause to be affixed the Great Seal of the State of Illinois.
done at the City of Springfield,

this 15 day of DECEMBER

A.D. 1980

Alan J. Dixon

Secretary of State

FOR 1983

Please check box 1 or box 2 and pay the correct filing fee:

- ☒ 1. Annual Report Filing Fee..... \$15.00 ONLY
☐ 2. Annual Report Filing Fee with Agent or Office Change..... \$20.00 ONLY

ANNUAL REPORT

Secretary of State
of IllinoisFILE NO. D3288-240-4
2.) FOR CHANGES ONLY

Registered Agent

Registered Office - Street Address

City, County, IL Zip Code

RECEIVED AND FILED

- 1.) Aero Plating Works, Inc.
 Paul H. Vishny
 30 North LaSalle Street
 Chicago, Illinois 60602 6 8 4

AUG 31 1984

CORPORATE NAME
 REGISTERED AGENT
 REGISTERED OFFICE
 CITY, STATE, ZIP CODE

- 3.) Federal Employers Identification Number (FEIN) 3 6 2 2 1 3 3 1 6
 State of incorporation IL ; date of incorporation 12/24/51 ;
 period of duration perpetual ; and if a foreign corporation; the
 address of the principal office in the State of incorporation is

- 4.) The names and addresses of the officers and directors are: (If officers are directors, so state.)

NAME	OFFICE	NUMBER & STREET	CITY	STATE	ZIP
Louis J. Maiorano, Jr.	President	1860 Elston Avenue	Chicago	Illinois	60622
Bessie Ward	Secretary	1860 Elston Avenue	Chicago	Illinois	60622
Sandra Maiorano	Treasurer	1860 Elston Avenue	Chicago	Illinois	60622
the above officers are also	Director	1860 Elston Avenue	Chicago	Illinois	60622
the directors of the corp-	Director				
oration	Director				

- 5.) The type of business actually conducted in Illinois is: metal plating

- 6.) Number of shares authorized and issued (as of December 31st)

CLASS	SERIES	PAR VALUE	NUMBER AUTHORIZED	NUMBER ISSUED
Common	none	no par value	1,000	1,000

- 7.) The amount of stated capital and paid-in surplus as of December 31st is:

STATED CAPITAL	\$ 16,500.00
PAID-IN SURPLUS	\$ 125,109.73
TOTAL	\$ 141,519.73

(Please complete reverse side of this report)

Under the penalty of perjury and as an authorized officer, I declare that this annual report and, if applicable, the statement of change of registered agent and/or office, pursuant to provisions of the Business Corporation Act, has been examined by me and is to the best of my knowledge and belief, true, correct, and complete.

By Paul H. Vishny President 7/20/84
 (Any Authorized Officer's Signature) (Title) (Date)

Attest Bessie Ward Sec. 7/20/84
 (Secretary's or asst. Secretary's Signature required only if changes listed in 2) (Title) (Date)

THIS REPORT MUST BE SIGNED

8.) Does the corporation elect to pay franchise tax on its total stated capital and paid-in surplus?

☒ YES ☐ NO

If no. 8 is answered "NO", numbers 9 thru 14 below must be completed.

9.) All information in numbers 10 thru 14 is given as of the _____ day of _____
19 _____ .

10.) The value of all the property owned by the corporation, wherever located, is. . . \$ _____ .

11.) The value of all the property owned by the corporation, located in Illinois, is. . . \$ _____ .

12.) The gross amount of business transacted by the corporation everywhere during the 12 months ended on the
above date was \$ _____ .

13.) The gross amount of business transacted by the corporation at or from places of business in Illinois during the
12 months ended on the above date was \$ _____ .

14.) Give the location of the principal places of business of the corporation in each state where authorized to trans-
act business and the amount of business transacted in each state last year.

C-126.4
BCA - 96-116

INSTRUCTIONS

*Paragraph 1: If any portion of the preprinted information does not agree with your records, you must complete Paragraph 2, or file appropriate amendment in event of corporation name change. The corporation cannot act as its own registered agent. The registered office may be, but need not be, the same as the place of business of the corporation, but the registered office and the address of the registered agent must be the same and must be located in the State of Illinois. Any subsequent change in the registered office or agent must be reported to the Secretary of State on forms furnished for that purpose.

*Paragraph 2: Such change, as noted in this paragraph, was authorized by resolution duly adopted by the board of directors. Please include the county where the new registered agent or office will be located.

*Paragraph 4: An Illinois corporation must have at least three directors except that if it has less than three shareholders of record, the number of directors may be less than three but not less than the number of shareholders.

*The information in Paragraphs 1 thru 5 must be given as of the date of execution of this report.

*The information in Paragraphs 6 & 7 must be given as of December 31.

*The information in Paragraphs 10 thru 14 must be given as of the close of business on December 31 or as of the end of the fiscal year next preceding December 31 if the corporation is on a fiscal year.

*Paragraph 7: Stated Capital may not be less than the par value of the issued shares, if shares have par value, plus any amount added or transferred to same without the issuance of shares. In no event may Stated Capital be "0" or a negative amount. Paid-in Surplus may be any amount received for the issued shares in excess of par value plus any amount added or transferred to same without the issuance of shares but in no instance may same reflect a negative amount. Paid-in Surplus does NOT include retained earnings or earned surplus.

*Paragraph 8: If answered "YES", do not answer Paragraphs 9 thru 14.

4 Rooms { NORTH
SOUTH
CHEM
BASEMENT

STATE OF ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY

INTER-OFFICE CORRESPONDENCE

DATE: September 19, 1984

MEMO TO: Land Division File

FROM: L. A. Crivello

LA Crivello

SUBJECT: Cook County - LPC 03162301 - ILD 005125836 - Chicago/Aero Plating

RECEIVED
SEP 21 1984

WASTE MANAGEMENT
BRANCH

On August 6, 1984 an inspection of Aero Plating revealed that the Company had moved out of the building at 1860 North Elston and a new company, Asher Industries, had moved in. The company officers of Asher are William Ludick (President), Rich Koski and Eric Oertly. They can be contacted by phone at (312) 486-0800. In talking to the Asher Industries people I learned that the Hazardous waste observed on previous inspections had been locked in the chemical room. Asher did not have a key to this room. Mr. Ludick said that Mr. Maiorano Sr. had told them that all the waste would be removed when the Maioranos got back from vacation. I also learned that the owner of the building was Seymour Shiner (CE-6-3930). An inspection of the building revealed that the floor and equipment were still heavily contaminated. The tank which was once part of the waste water treatment system was filled with liquid and some sludge was observed on the bottem. The rubber drums containing chromic acid and the sludge in the basement observed on a previous inspection were not observed on this inspection.

I contacted Mr. Maiorano Sr. at S. C. Industries in Franklin Park and arranged to meet him at the building at 1860 Elston to survey the chemical room. On August 28, 1984, Mary Wang and I met Mr. Maiorano Sr. and Maiorano Jr. at 1860 North Elston. Mr. Maiorano Sr. said that the drums of chromic acid had been sold as well as much of the equipment.

There were approximately 59 drums of waste material in the chemical room. These included acids caustics and solid material from the basement. In the rest of the building we observed a 4000 gal tank filled with nickel solution and the waste water treatment tank filled with liquid. 6 or 7 drums of material were found outside the chemical room as well as a heavily contaminated plating line along the north wall. Mr. Maiorano Sr. said they were working on getting rid of all the drums in the chemical room but he wasn't sure what else needed to be done. Mary Wang suggested that he submit a closure plan which should include measures for decontaminating the floors, walls and equipment.

On September 19, 1984, I talked with Mr. Koski. He said that the material is still locked in the chemical room and neither the Maiorano's or thier representatives have been at the building since August 28th.

cc: Region File, D. Gimbel, Wayne Pearson, U.S.E.P.A., S. Grossmark, A.G.

EVERY INTER-OFFICE LETTER SHOULD HAVE ONLY ONE SUBJECT.
ALL LETTERS TO BE SIGNED . . . NO SALUTATION OR COMPLIMENTARY CLOSING NECESSARY.

guards built into the criminal justice system, the most important being the right of the accused to a fair and impartial trial (see *People v. Creque* (1978), 72 Ill.2d 515, 22 Ill.Dec. 403, 382 N.E.2d 793), minimize any disparity which may arise from the State's two-part scheme of initiating criminal proceedings." (80 Ill.App.3d 128, at 132, 35 Ill.Dec. 121, 398 N.E.2d 1071.) We therefore hold that the trial court erred by quashing the indictment herein.

The judgment of the circuit court of Cook County is therefore reversed, and the cause is remanded for further proceedings.

Reversed and remanded.

McGLOON and GOLDBERG, JJ., concur.



115 Ill.App.3d 803
71 Ill.Dec. 365

In the Matter of the ESTATE OF John
D. PLEPEL, Deceased, Decedent-
Appellant, Cross-Appellee,

v.

INDUSTRIAL METALS, INC., an Illinois
Corporation, Claimant-Appellee,
Cross-Appellant,

and

United Metals, Inc., an Illinois
corporation, Claimant-Appellee,
Cross-Appellant.

No. 82-1633.

Appellate Court of Illinois,
First District, Second Division.

June 14, 1983.

Estate of officer of dissolved corporation appealed order of the Circuit Court, Cook County, Bernard A. Polikoff, J., allowing claims of creditors. The Appellate Court, Stamos, J., held that: (1) reinstatement of dissolved corporation did not "relate back" to time of dissolution so as to

absolve officer of personal liability for debts incurred during period of dissolution, and (2) insofar as officer had continuously paid interest on balance due of accounts with creditors during their business relationships until his death, interest terms were part of contract between parties.

Affirmed in part, reversed in part and remanded with directions.

1. Corporations ⇌349

Personal liability may be imposed on officer of dissolved corporation who enters into contracts on behalf of corporation after dissolution.

2. Corporations ⇌349

Reinstatement of dissolved corporation does not "relate back" to time of dissolution so as to absolve officers of personal liability for debts incurred by them during period of dissolution.

3. Corporations ⇌349

Officer of dissolved corporation, who was in position similar to that of preincorporation promoter entering into contracts on behalf of corporation not yet in existence, could be held liable for debts incurred during period of time after corporation had been dissolved and before it was yet reinstated particularly since creditors filed claims against probate estate of the officer for amounts due while business was still in operation and before corporate reinstatement strongly indicating that creditors looked solely to the officer for payment of the debts.

4. Contribution ⇌1

Remedy of the estate for payment of debts not incurred directly by the decedent officer of dissolved corporation would be an action for contribution from those other persons who also incurred debts on behalf of dissolved corporation.

5. Interest ⇌5

Insofar as officer of dissolved corporation had continuously paid interest on balance due of his accounts with creditors during their business relationships until his

death, interest to
between parties.

Jares & Kome
Chicago, of counsel.

Elmore, Gowen
Georges & Herdrie
ville, of counsel, for

STAMOS, Justice

The estate of decedent appeals from the order allowing the claims of Industrial Metals, Inc. (Industrial) and United Metals, Inc. (United), contending that the claims of these claimants were barred by the statute of limitations which decedent was the owner and president. The claims were based on open accounts maintained by Advance. The debts were incurred during a period when Advance was partially dissolved for federal taxes and file an annual report. The statute contends that the substance of Advance as a corporation to the time that it was dissolved, and that therefore liable for debts incurred on behalf of the corporation was not in existence at the time of the cross-appeal, contending that the statute applied in denying them interest on their claims.

The facts of this case are that John D. Plepel was the president and stockholder of Advance Metal Moulding, a closely held corporation engaged in the fabrication of metal moulds and steel. On December 1, 1981, Advance was dissolved by the Secretary of State and required to pay franchise taxes and file an annual report. (Ill. Rev. Stat. 1981, ch. 32, par. 157.82(a).) The dissolution of the corporation, however, was used to conduct business.

Claimants Industrial and United Metals sold various quantities of

ESTATE OF PLEPEL v. INDUSTRIAL METALS, INC. Ill. 1245

Cite as 450 N.E.2d 1244 (Ill.App. 1 Dist. 1983)

death, interest terms were part of contract between parties.

Jares & Komosa, Joseph J. Jares, Jr., Chicago, of counsel, for decedent-appellant.

Elmore, Gowen & DeMichael, Midlothian, Georges & Herdrich, James Georges, Naperville, of counsel, for claimant-appellee.

STAMOS, Justice:

The estate of decedent John D. Plepel appeals from the order of the trial court allowing the claims of Industrial Metals, Inc. (Industrial) and United Metals, Inc. (United), contending that the debts claimed by these claimants were corporate debts of Advance Metal Moulding Co. (Advance), of which decedent was the majority stockholder and president. The claims of both claimants were based on the balances due on open accounts maintained with claimants by Advance. The debts were incurred during a period when Advance had been involuntarily dissolved for failure to pay franchise taxes and file an annual report. The estate contends that the subsequent reinstatement of Advance as a corporation "relates back" to the time that it was involuntarily dissolved, and that therefore the estate is not liable for debts incurred by decedent on behalf of the corporation when the corporation was not in existence. Claimants each cross-appeal, contending that the trial court erred in denying them pre-judgment interest on their claims.

The facts of this case are simply stated. John D. Plepel was the president and chief stockholder of Advance Metal Moulding Co., a closely held corporation engaged in the fabrication of metal mouldings from rolled steel. On December 1, 1978, Advance was dissolved by the Secretary of State for failure to pay franchise taxes and failure to file an annual report. (See Ill.Rev.Stat. 1981, ch. 32, par. 157.82(a).) After the dissolution of the corporation, Advance continued to conduct business.

Claimants Industrial and United made sales of various quantities of steel to Ad-

vance pursuant to oral orders placed with them by Advance. Industrial and United carried Advance on their books as an open account, and Advance was periodically billed by both companies for the outstanding balance on the accounts plus interest. These bills and invoices were paid by company checks signed by John Plepel. The signatures on the checks contained Plepel's name only, and did not indicate that he was signing in any corporate capacity.

John Plepel died on February 22, 1981. At the time of his death, Advance owed United \$15,546.32 and Industrial \$15,583.34 for steel which had been delivered. United and Industrial filed claims against the decedent's estate on June 2, 1981.

On June 9, 1981, Advance was reinstated as a corporation by the Secretary of State. On June 18, 1981, the reinstated corporation filed a petition for bankruptcy in the Federal district court. The presidents of United and Industrial sat on the unsecured creditor's committee in those proceedings. Industrial received \$2,337.50 and United received \$2,331.95.

In the probate proceedings, claimants contended that John Plepel was personally liable for the amounts due on the open accounts because of the operation of Ill.Rev. Stat.1981, ch. 32, par. 157.150, which provides that:

"[a]ll persons who assume to exercise corporate powers without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof."

After hearing evidence relating to the amount unpaid on the accounts and the course of business between Advance and claimants, the trial court entered judgment for Industrial in the amount of \$11,249.57 and for United in the amount of \$13,214.38. Those amounts reflect the full original balances presented by claimants less the amounts they received in the bankruptcy court. The court refused to allow pre-judgment interest on these amounts, although the invoices sent to Advance during the decedent's life reflect charges for interest on amounts due, and those charges were

paid with checks signed by the decedent without protest.

On appeal, the estate contends that the reinstatement of Advance "relates back" to the time of its dissolution as a corporation, and that therefore decedent has no personal liability for debts incurred during the period of dissolution. Industrial and United each cross-appeal, contending that the trial court erred in denying them pre-judgment interest on the amounts of the open accounts.

[1] The precise issue of whether the officer of a corporation which has been involuntarily dissolved, and which is later reinstated, is personally liable for debts incurred by the business during the period of dissolution is a question of first impression in Illinois. It can not be doubted that an officer of a dissolved corporation is without authority to exercise corporate powers, and that if Advance had not been reinstated, par. 157.150 would operate to impose personal liability on all those who had incurred debts on behalf of the former corporation after it had been dissolved. The question, then, is whether the reinstatement of the corporation somehow "relates back" to the time that the corporation was dissolved so as to cure the lack of authority to exercise corporate powers which existed at the time that the debts were incurred. The predecessor statutes to par. 157.150 provided that any persons assuming to act for a corporation before all stock named in the articles was subscribed (Laws 1871-72, p. 296, § 18) or before the corporation was authorized to do business (Laws 1919, p. 312, § 149) were jointly and severally liable for any debts incurred by them prior to the corporation coming into existence. (See *M.H. Vestal Co. v. Robertson* (1917), 277 Ill. 425, 427-28, 115 N.E. 629.) Under those prior statutes, as well as under par. 157.150, the courts look to the intent of the parties to a pre-incorporation contract in determining whether the incorporator or promoter, as well as the corporation, is liable on the contract. (See *H.F. Phillipsborn & Co. v. Suson* (1974), 59 Ill.2d 465, 472-73, 322 N.E.2d 45.) Paragraph 157.150 differs from its prede-

cessors in that, by its terms, its application is not limited to debts and liabilities incurred prior to incorporation, but is applicable to debts incurred by "[a]ll persons who assume to exercise corporate powers without authority." It therefore follows that personal liability may be imposed on an officer of a dissolved corporation who enters into contracts on behalf of the corporation after dissolution. See, e.g., *Kessler Distributing Co. v. Neill* (Iowa App.1982), 317 N.W.2d 519, 521 (interpreting ICA Stat. 496 A. 141, which is substantively identical to Ill.Rev.Stat.1981, ch. 32, par. 157.150).

[2] The courts of other jurisdictions have imposed personal liability upon officers of dissolved corporations who incurred debts after dissolution despite the fact that the corporation was later reinstated. (See *Kessler Distributing Co. v. Neill* (Iowa App. 1982), 317 N.W.2d 519, 522; *Poritzky v. Wachtel* (1941), 176 Misc. 633, 27 N.Y.S.2d 316, 317-18.) In *Poritzky*, the court noted that if the reinstatement of the corporation were held to "relate back" so as to nullify the personal liability of the person who incurred the debts, a former officer of a dissolved corporation could obtain credit, and subsequently shift his personal liability to the corporation simply by paying the arrearage in franchise tax. (27 N.Y.S.2d 316, 318.) We agree that such a result is against public policy because it would create a mechanism by which just debts could be easily evaded. We hold that the reinstatement of a dissolved corporation does not "relate back" to the time of dissolution so as to absolve the officers of personal liability for debts incurred by them during the period of dissolution.

The estate cites *Kaybill Corporation, Inc. v. Cherne* (1974), 24 Ill.App.3d 309, 320 N.E.2d 598, and *Amman Food & Liquor v. Heritage Insurance Co.* (1978), 65 Ill.App.3d 140, 22 Ill.Dec. 242, 382 N.E.2d 562, for the proposition that the reinstatement of a corporation "relates back" to the time of dissolution as a matter of Illinois law. Those cases are inapposite, however, standing as they do for only the narrow proposition that a suit brought by a plaintiff dissolved cor-

poration need not corporate capacity. corporation is reinstated period for its cases do not speak statement on personal liability incurred during the and therefore they the instant case.

[3] Our holding recognizes the imposition does not fully resolve whether such liability in the instant case. in a position similar corporation promoter who on behalf of a corporation. Under our statute *H.F. Phillipsborn & Co. v. Suson*, 59 Ill.2d 465, 322 N.E.2d 45, will not be imposed on debts prior to the corporation. the parties intended should be bound by 465, 472-73.) In the court allowed no testimony conversations with the decedent because of such conversation Act. (Ill.Rev.Stat.1981) Therefore, there is record that speaks of the parties. However, devoid of evidence in any way aware that a business which participated. All checks in invoices were signed the use of any corporate of any communication would have indicated of Advance was introduced name of the business. Moulding Co., carried rateness. (Cf. *Amman Food & Liquor v. Heritage Insurance Co.*, 65 Ill.App.3d 140, 22 Ill.Dec. 242, 382 N.E.2d 562, for the proposition that the reinstatement of a corporation "relates back" to the time of dissolution as a matter of Illinois law. Those cases are inapposite, however, standing as they do for only the narrow proposition that a suit brought by a plaintiff dissolved corporation need not corporate capacity. corporation is reinstated period for its cases do not speak statement on personal liability incurred during the and therefore they the instant case.

ESTATE OF PLEPEL v. INDUSTRIAL METALS, INC. III. 1247

Cite as 450 N.E.2d 1244 (Ill.App. 1 Dist. 1983)

poration need not be dismissed for lack of corporate capacity to sue so long as the corporation is reinstated during the limitations period for its cause of action. Those cases do not speak to the effect of reinstatement on personal liabilities which are incurred during the period of dissolution, and therefore they have no application to the instant case.

[3] Our holding that par. 157.150 authorizes the imposition of personal liability does not fully resolve the question of whether such liability was properly imposed in the instant case. Decedent here stands in a position similar to that of a pre-incorporation promoter who enters into contracts on behalf of a corporation not yet in existence. Under our supreme court's holding in *H.F. Phillipsborn & Co. v. Suson* (1974), 59 Ill.2d 465, 322 N.E.2d 45, personal liability will not be imposed on a person incurring debts prior to the corporate existence unless the parties intended that the individual should be bound by the contract. (59 Ill.2d 465, 472-73.) In the instant case, the trial court allowed no testimony concerning any conversations with or representations made by decedent because of the inadmissibility of such conversations under the Dead Man's Act. (Ill.Rev.Stat.1981, ch. 110, par. 8-201.) Therefore, there is little evidence in the record that speaks directly to the intent of the parties. However, the record is also devoid of evidence that claimants were in any way aware that they were dealing with a business which purported to be a corporation. All checks in payment of claimant's invoices were signed by decedent without the use of any corporate title; no evidence of any communication to claimants that would have indicated the corporate status of Advance was introduced at trial; and the name of the business, Advance Metal Moulding Co., carried no indicia of corporateness. (Cf. *American Insurance Co. of Newark, New Jersey v. McClelland* (1913), 184 Ill.App. 381, 385 (mere use of the term "company" in business name is not sufficient to indicate corporate status).) Additionally, we interpret the fact that claimants filed claims in the decedent's probate estate for the amounts due while the busi-

ness was still in operation and before the corporate reinstatement as a strong indication that claimants looked solely to decedent for payment of the debts. Insofar as there is nothing in the record to indicate that claimants were ever apprised that they were dealing with a business that purported to be a corporation, or that the parties ever intended anything but that claimants should look to decedent for payment of the debts, we hold that the decedent's estate is liable for the amounts due to claimants.

[4] We note that because of the operation of the Dead Man's Act (Ill.Rev.Stat. 1981, ch. 110, par. 8-201), the decedent's dealings with claimants could be established only indirectly. The testimony of Industrial's president established that the decedent had acted as purchasing agent for Advance throughout their business relationship. A salesman for United testified to completing order forms which were received into evidence and which indicated that some of the orders for steel which comprised the account due to United originated from the decedent, and that other orders were placed by other persons acting on Advance's behalf. In this connection, it must be stressed that although the evidence indicates that the decedent was not the only person incurring debts on behalf of Advance during the period of dissolution, the liability imposed by par. 157.150 is joint and several. Therefore the judgment against the estate for all sums due on the open accounts of claimants is proper, and the remedy of the estate for the payment of debts not incurred directly by the decedent is an action for contribution from those other persons who also incurred debts on behalf of Advance.

[5] Claimants contend on cross-appeal that the trial court erred in refusing to allow pre-judgment interest on their claims. It is undisputed that the invoices sent to Advance provided that interest would accrue on the sums due (at a rate of 1½% per month for United and 16½% per year for Industrial) and that decedent signed checks in payment of invoices containing the same charges without protest. Claimants con-

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tend that these facts indicate that the interest terms were part of their contracts with decedent, while the estate contends that there is no evidence that decedent ever "acquiesced" to those terms. Insofar as decedent had continuously paid interest on the balance due of his accounts with claimants during their business relationships until his death, we hold that the interest terms were part of the contracts between the parties. Therefore, that portion of the judgment of the trial court which disallowed interest on United's and Industrial's claims is reversed and the cause remanded for determination of the interest due claimants.

The judgment of the circuit court is affirmed in part, reversed in part, and remanded with directions to proceed in conformity with the views expressed herein.

DOWNING, P.J., and HARTMAN, J.,
concur.



115 Ill.App.3d 739
71 Ill.Dec. 369

**HOUSING AUTHORITY OF the
COUNTY OF COOK, a municipal
corporation, Plaintiff-Appellee,**

Y.

Margarita R. TONSUL,
Defendant-Appellant.

No. 82-2027.

Appellate Court of Illinois,
First District, Second Division.

June 14, 1983.

Municipal housing authority brought a forcible entry and detainer action. The Circuit Court, Cook County, James McCourt, J., rendered judgment for the housing authority, and tenant appealed. The Appellate Court, Stamos, J., held that the judgment was void because the housing authori-

ty's complaint was prepared, signed, and filed by a nonattorney agent.

Reversed.

Downing, P.J., filed a dissenting opinion.

1. Corporations 508

Attorneys and Counselors Act, which allows parties litigant to prosecute and defend their actions in their proper persons, in no way authorizes corporation to appear in any proceeding in any court through agent who is not licensed attorney. S.H.A. ch. 13, § 11.

2. Corporations 508

Where cause is prosecuted by layman acting on behalf of corporation, any proceedings in case are nullity and any judgment rendered therein is void and this strict rule operates to void judgment even where lay agent merely files complaint over his own signature, and all subsequent court appearances are made by duly licensed attorney. S.H.A. ch. 13, ¶ 11.

3. Municipal Corporations 1030

Municipal housing authority was not empowered to initiate litigation on its own behalf except through licensed attorney and signing of forcible entry and detainer complaint by nonattorney agent rendered all subsequent proceedings in the case a nullity, notwithstanding the simplicity of the forcible entry and detainer complaint, or the fact that the agent, by filling out and signing the complaint, was performing a simple ministerial task requiring no legal knowledge or skill. S.H.A. ch. 13, ¶ 11.

Cook County Legal Assistance Foundation, Inc., Chicago (Marilyn S. Rzasa, Chicago, of counsel), for defendant-appellant.

Keck, Mahin & Cate, James T. Otis, James J. Casey, Chicago (A. Benjamin Goldgar, Chicago, of counsel), for plaintiff-appellee.

STAMOS, Justice

Defendant Ma
from the judge
court in favor of
Housing Authority
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The complaint was filed on July 28, 1982. The complaint was signed by an agent for plaintiff. The space reserved for the signature of Floyd was not filled. At that time, Illinois at that time, the word "attorney" was the word "agent" on the signature line. The agent for plaintiff, on July 28, 1982, at a hearing requested and was granted an appearance. Defendant's appearance and motion for summary judgment on the grounds that the municipal corporation could not initiate litigation through a licensed agent. The signing of the complaint rendered all subsequent proceedings in the case a nullity. The court granted the motion, and defendant's motion to test the merits of the complaint entered for the purpose of staying under a writ of habeas corpus during the pendency of the appeal.

[1, 2] It is well the Attorneys and Stat.1981, ch. 13, parties litigant to proceedings "in their p authorizes a corpo proceeding in any who is not a license. *Ambulance v. Da* 318, 319, 306 N.E.2 (1966), 73 Ill.App.2 see, e.g., *Remole S* (1966), 68 Ill.App.2 678.) Where a c layman acting on any proceedings i

cruing and in a decrease in whatever value, if any, the shares of stock in Mobile Fuel Shipping, Inc. had, and thereby the diminution of the estate of this debtor.

The future of Mobile Fuel Shipping, Inc., is uncertain, but negotiations for its rehabilitation are continuing and no party in interest to its bankruptcy case, including the trustee, has filed a motion to dismiss or convert the case of Mobile Fuel Shipping, Inc.

The Court concludes that, since the Chapter 11 case of Mobile Fuel Shipping, Inc., has not been converted to a Chapter 7 liquidation or been dismissed, the evidence adduced in Ms. Nielsen's case is inconclusive and does not satisfy that there is an absence of a reasonable likelihood of her rehabilitation. If Mobile Fuel Shipping, Inc. were rehabilitated, the debtor might then have the ability to effectuate a plan, and she would have a reasonable likelihood of rehabilitation. Therefore, the Court finds that paragraphs (1) and (2) of Section 1112(b) do not provide grounds for dismissal of this case. The Court concludes that no cause has been shown why this case should be dismissed and that the motion by American Security Bank should be denied.



In the Matter of S & T TERRY
CONTRACTORS, INC., Debtor.

GYPSUM SUPPLY COMPANY, Plaintiff,

v.

S & T TERRY CONTRACTORS,
INC., Defendant.

Bankruptcy No. 80 B 00751.
Adv. No. 80 A 0152.

United States Bankruptcy Court,
N. D. Illinois, W. D.

Aug. 19, 1980.

Proceedings were had on motion to dismiss voluntary petition in Chapter 11. The

Bankruptcy Court, Richard N. DeGunther, J., held that Illinois statute providing for survival of remedies of corporation after dissolution did not give dissolved former de jure corporation a right to file voluntary Chapter 11 petition.

Order accordingly.

1. Abatement and Revival ⇐ 39 Corporations ⇐ 630(1)

Statute relating to survival of remedies of corporation after dissolution must be limited strictly to what its language permits. S.H.A.Ill. ch. 32, § 157.94.

2. Bankruptcy ⇐ 9

Bankruptcy Court should look to state law to determine rights of debtor.

3. Corporations ⇐ 28(1)

A "de facto corporation" exists where there is a law authorizing incorporation, an attempt in good faith to incorporate under such law, and user of corporate powers.

See publication Words and Phrases for other judicial constructions and definitions.

4. Bankruptcy ⇐ 618

Illinois statute providing for survival of remedies of corporation after dissolution did not give dissolved former de jure corporation a right to file voluntary Chapter 11 petition. Bankr.Code, 11 U.S.C.A. § 1101 et seq.; Ill.S.H.A. ch. 32, § 157.94.

Thomas A. Bueschel, Rockford, Ill., for plaintiff, Gypsum Supply Co.

Jack R. Cook, Loves Park, Ill., for debtor, S & T Terry Contractors, Inc.

MEMORANDUM OPINION

RICHARD N. DeGUNTHER, Bankruptcy Judge.

At Rockford in said District on August 19, 1980, on the Motion of Gypsum Supply Company to Dismiss the Voluntary Petition

in Chapter 11 Inc., the Court of counsel, find & T Terry Contractors, Inc., Reinstatement ports and fees the State of whether S & T entity which m

[1] Chapter revised Statutes remedies of a § 157.94 must language perm 94 permits a against the cor claim[s] exist curred, PRIOR (emphasis mi brought within Trust Co. v. 41 tion, 302 U.S. 147). The filin in Chapter 11 the limited re corporation un Chapter 11 pr that applies to incurred after ration. If the tended that a have the bank for two years have so specif

[2-4] It is urges, that th look to state la the debtor. (I 65 S.Ct. 513, corporation ex thORIZING incor faith to incorp

in Chapter 11 of S & T Terry Contractors, Inc., the Court, having heard the arguments of counsel, finds that the corporate entity, S & T Terry Contractors, Inc., was incorporated under the laws of the State of Illinois on October 29, 1976, and involuntarily dissolved on December 1, 1978; on July 24, 1980, S & T Terry Contractors, Inc., filed its Voluntary Petition in Chapter 11; thereafter, on August 15, 1980, S & T Terry Contractors, Inc., submitted its Application for Reinstatement together with certain reports and fees to the Secretary of State of the State of Illinois. The question is whether S & T Terry Contractors, Inc. is an entity which may file Chapter 11.

user of corporate powers. See 13 I.L.P. 282. S & T Terry Contractors, Inc., is not a de facto corporation, rather it is a dissolved former de jure corporation. Its rights are limited to those permitted under § 157.94, and do not include the filing of a Voluntary Petition in Chapter 11.

An Order consistent with this Memorandum Opinion is filed herewith.



ANALYSIS

[1] Chapter 32, § 157.94 of Illinois Revised Statutes provides for the survival of remedies of a corporation after dissolution. § 157.94 must be limited strictly to what its language permits. The language of § 157.94 permits any remedy available to or against the corporation for any "right[s] or claim[s] existing, or . . . liability[ies] incurred, PRIOR TO SUCH DISSOLUTION" (emphasis mine) if the proceeding is brought within two years. (*Chicago Title & Trust Co. v. 4136 Wilcox Building Corporation*, 302 U.S. 120, 58 S.Ct. 125, 82 L.Ed. 147). The filing of the Voluntary Petition in Chapter 11 is a remedy that far exceeds the limited remedies granted to a dissolved corporation under § 157.94. Here, the Chapter 11 proceeding constitutes a remedy that applies to rights, claims and liabilities incurred after the dissolution of the corporation. If the Illinois Legislature had intended that a dissolved corporation should have the bankruptcy remedy available to it for two years after dissolution, it could have so specifically provided, but did not.

[2-4] It is true, as debtor's counsel urges, that the Bankruptcy Court should look to state law to determine the rights of the debtor. (*Price v. Gurney* 324 U.S. 100, 65 S.Ct. 513, 89 L.Ed. 776) A de facto corporation exists where there is a law authorizing incorporation, an attempt in good faith to incorporate under such law, and a

In Re Michael LITTELL, Nancy Jean Littell, Debtors.

Michael LITTELL, Nancy Jean Littell, Plaintiffs,

v.

STATE OF OREGON acting By and Through the STATE BOARD OF HIGHER EDUCATION for and on behalf of Portland State University and State of Oregon acting by and through the State Scholarship Commission, Defendants.

Bankruptcy No. 380-00082.

Adversary Proceeding No. 80-0062.

United States Bankruptcy Court,
D. Oregon.

Aug. 21, 1980.

In an adversary proceeding pertaining to the dischargeability of debtor spouses' student loans, the Bankruptcy Court, Folger Johnson, J., held that in view of the limited income of the spouses and the efforts which they made to obtain work as teachers and the likelihood that they would not have great success in finding work in the future in their chosen profession, it would be an undue hardship to require them to pay off the entirety of their student loans; they would, however, be required to pay \$10 a month on the National Direct Student Loan of each, with the hus-

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF

LOUIS J. MAIORANO, SR.,
LOUIS J. MAIORANO, JR.,
d/b/a AERO PLATING WORKS
ILD 005125836

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Docket No. V-W-84R-071

RESPONSE TO COMPLAINT

PREAMBLE

The preamble of paragraph I of the Complaint herein filed by the United States Environmental Protection, Region V is erroneous as to the designation of the Respondents. Louis J. Maiorano, Sr. was the principal operating officer of Aero Plating-Works, Inc., an Illinois corporation prior to January 2, 1979. That said Louis J. Maiorano, Sr. did sell all of his shares of common stock to Louis J. Maiorano, Jr. who from such date became and to date is the President and sole stockholder of said corporation. Further, Aero Plating Works, Inc., is an Illinois corporation, which for a very short period of time had been dissolved by the Secretary of State of Illinois as the result of the inaction of its counsel but has now been fully reinstated. That Louis J. Maiorano had no interest or management function in said business.

JURISDICTION

The Respondent admits the statement as to jurisdiction in this cause.

DETERMINATIONS

1. For response to paragraph 1, Louis J. Maiorano, Jr. admits the allegations therein contained but only as a sole corporate shareholder; that for further response alleges that Louis J. Maiorano, Sr. is improperly impleaded in this matter.

2-5. For response to paragraphs 2 through 5 inclusive Respondent admits the allegations therein contained.

6. For response to paragraph 6 and subpart (1) Respondent denies that Aero Plating Workings, Inc. was a storage facility for hazardous wastes. ✓

7. For response to paragraph 7 Respondent denies the allegations therein contained. ✓

8. For response to paragraph 8 Respondent denies the allegations therein contained. ✓

9. For response to paragraph 8 and subparts (a) through (t) inclusive Respondent denies the allegations therein contained. ✓

10. For response to paragraph 10 and subparts (a) through (p) inclusive Respondent denies the allegations therein contained. ✓

11. For response to paragraph 11 and subparts (a) and (b) Respondent denies the allegations therein contained. ✓

12. For response to paragraph 12 Respondent denies the allegations therein contained. ✓

**ORDER AND CONDITIONS
FOR CONTINUED OPERATION OR CLOSURE**

1. For response to paragraph 1 and subparts (a) through (e) inclusive Respondent alleges that Aero Plating Works, Inc. at 1860 North Elston Avenue, Chicago, Illinois has totally terminated its business operation and will comply with the requests therein made rather than become engaged in a wasteful contested issue.

ASSESSMENT OF PENALTY

For response to the assessed Penalty Respondent alleges that the penalty is totally unwarranted and if found to be in anyway warranted the amount is

not in accordance with the calculation under the published matrix.

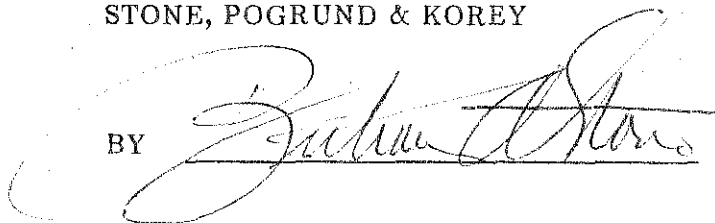
SETTLEMENT CONFERENCE

That parties have met in conference to resolve the issues and will probably finalize some settlement that is fair and reasonable.

Respectfully submitted

STONE, POGRUND & KOREY

BY

A large, stylized handwritten signature in dark ink, appearing to read "Richard A. Stone", is written over a horizontal line.

Stone, Pogrund & Korey
221 North LaSalle Street
28th Floor
Chicago, Illinois 60601
312/782-3636

Response due 9/17

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:

LOUIS J. MAIORANO, SR.
LOUIS MAIORANO, JR.
d/b/a AERO PLATING WORKS, INC.
ILD 005125836

PREHEARING MEMORANDUM

The Respondents, pursuant to order of the Administrative Judge in accordance with the consolidated rules of practice (40 CFR Part 22), herewith presents its memorandum of evidence intended to be presented at the hearing of the cause.

PARTIES

Prior to January 1979, AERO PLATING WORKS, INC., a corporation duly organized and existing under the laws of the State of Illinois had one shareholder, namely: LOUIS J. MAIORANO, SR.

On January 2, 1979 LOUIS J. MAIORANO, SR. did transfer all shares issued to and standing in his name to AERO PLATING WORKS, INC. pursuant to written consent of the Board of Directors of said corporation and thereafter LOUIS MAIORANO, JR. was and to date hereof is the sole shareholder of record of said corporation. As a result thereof LOUIS MAIORANO, JR. became the President and Chief Operating Officer of said corporation and LOUIS J. MAIORANO, SR. was merely a consultant for the said corporation.

LOUIS J. MAIORANO, SR. as the owner of the realty occupied by AERO PLATING WORKS, INC. did lease the same to said corporation from January 2, 1979 to December 31, 1982 and on December 10, 1982 did extend the said lease to December 31, 1984.

BUSINESS OPERATION

AERO PLATING WORKS, INC. engaged in the electroplating business specializing in nickel and chromium plating finishes on metal.

PREMISES

The buildings occupied by the corporation are described as follows:

- A. Levels: First or main floor and basement.
- B. Construction: Brick, single story building with concrete floors, both main floor and basement.
- C. Drainage: Both buildings equipped with floor drains which are connected to the public sewerage system and by reason thereof there is no drainage to the exterior of the buildings.

HAZARDOUS WASTES

In the electroplating process hazardous wastes were generated by the Respondent.

- A. Storage: Plating wastes were stored in 55 gal. drums, approximately at center of the plant along the west wall.
- B. Floor sweepings and miscellaneous nonhazardous residues had for years been piled in the basement of the 20 foot building on the north side of the plant.

CLEANUP

The Respondent has accomplished total clean up of the plant as follows:

- A. Thirty-six drums of chromium plating solution has been sold and transferred for reuse.
- B. All drums of hazardous wastes have been removed and basement premises cleared of miscellaneous residues.
- C. The chromium plating line in the north building has been disassembled, sold to Midwest Metal Finishers and removed.

D. The only remaining task is to have the premises inspected by a licensed engineer who will certify closure in accordance with the applicable provisions of the Resource, Conservation and Recovery Act and U.S.E.P.A. regulations.

LIABILITY

AERO PLATING WORKS, INC. and LOUIS MAIORANO, JR. have admitted liability and have voluntarily cleaned up the subject premises.

PENALTIES

Following the published matrix of the U.S.E.P.A. Respondents submit the following:

A. Status of the Corporation:

1. All business terminated in March 1983.
2. At the time of termination of business liabilities totaled approximately \$120,000.00.
3. Accounts receivable and equipment and supplies were liquidated and approximately \$40,000.00 realized was paid to creditors leaving a present indebtedness to creditors of approximately \$80,000.00. Based upon these facts the corporation has no funds or assets to satisfy any penalty assessed.

B. Status of LOUIS MAIORANO, JR.:

1. From mid 1983 to December 31, 1984 worked for S.C. Industries, Inc. earning \$70,000.00 in 1984 as a plant manager.
2. January 1985 started a new venture until mid March 1985 without earning any money.
3. Mid March to date has been employed by Rin, Inc. as a salesman earning \$600.00 per week gross.

4. Present financial status:

Cash in Bank - joint savings account \$1,000.00

Stocks and bonds -0-

5. Family consists of a wife and four minor children.

CALCULATION OF PROPOSED PENALTY

A. Potential for harm and extent of deviation: Because of the structure of the premises occupied by the corporation there was virtually no potential for harm to the environment and the extent of deviation from required compliance with the provisions of the act by a generator should be classified as moderate and the potential for harm should be classified as minor. Based upon these concepts the penalty should be in the range of \$500.00 to \$1,499.00. Arguendo it is obvious that the financial plight of the corporation was the underlying factor in delaying disposal of the drummed hazardous wastes rather than an effective means for generating greater financial benefit for the corporation.

B. Penalty adjustment:

1. The Respondents have demonstrated a good faith effort to comply with the code requirements by complete cleanup at no cost to the government.

2. Based upon the above facts the degree of willfulness or negligence was in no way severe due to the financial problems of the corporation.

3. There is no prior history of noncompliance with the environmental codes or regulations.

4. Consideration must be given to the Respondents inability to pay penalties in making an assessment based upon the financial data above set forth.

CONCLUSION

There is no contest on the question of violation by the corporation and LOUIS MAIORANO, JR., as its chief operating officer, of the provision of the Resource, Conservation and Recovery Act.

The only issues in contest in this cause is the status of LOUIS J. MAIORANO, SR. as a proper party to this cause and the assessment of penalties.

RESPECTFULLY SUBMITTED:
LOUIS J. MAIORANO, SR.,
LOUIS MAIORANO, JR., and
AERO PLATING WORKS, INC.

BY: STONE, POGRUND & KOREY

Per: 

Their attorneys

Stone, Pogrund & Korey, No. 90803
Attorneys for Plaintiffs
221 North LaSalle Street
28th Floor
Chicago, Illinois 60601
312/782-3636

Resp. Ex.

COLLATERAL NOTE — INSTALLMENT

\$ 150,000

January 2

19 79

For Value Received, the undersigned (the "Debtor" herein) promises to pay to the order of LOUIS J. MAIORANO - - - - - the principal sum of One Hundred Fifty Thousand and 00/100ths (\$150,000.00) - - - Dollars

~~*(a) and interest from - - - - - on the balance of principal remaining from time to time unpaid at the rate of - - - - - per cent per annum, such principal sum and interest to be payable in installments as follows: - - - - - Dollars on the - - - - - day of - - - - -, 19 - - - - -;~~

~~Dollars on the - - - - - day of each month thereafter for - - - - - consecutive months, with a final payment of principal and interest of - - - - - Dollars on the - - - - - day of - - - - -, 19 - - - - -.*~~

~~*(b) payable in installments as follows:~~

~~- - - - - Dollars on the - - - - - day of - - - - -, 19 - - - - -;~~

~~- - - - - Dollars on the - - - - - day of each month beginning on the - - - - - day of - - - - -, 19 - - - - -, for - - - - - months succeeding, and a final payment of - - - - - Dollars~~

~~on the - - - - - day of - - - - -, 19 - - - - -, with interest on the balance of principal remaining from time to time unpaid at the rate of - - - - - per cent per annum, payable on the due dates for install-~~

~~ments of principal as aforesaid, in weekly installments of Four Hundred and 00/100ths (\$400.00) each week commencing the week of January 8, 19 - - - - -, and~~

~~All payments on account of the indebtedness represented by this Note shall be applied first to accrued and unpaid interest and the remainder to principal. Any installments of principal not paid when due shall bear interest after maturity at the rate of seven per cent per annum. Payments of both principal and interest shall be made at~~

~~or such other place as the legal holder hereof may from time to time in writing appoint.~~

The Debtor hereby grants a security interest in and transfers, pledges and delivers to the payee the following described property (the "Collateral" herein) to secure the payment of this Note and to secure all future advances to or for the account of the Debtor, including advances for taxes, levies, insurance, repairs to or maintenance of the Collateral, made by the payee, at his option, and all other present or future liabilities of the Debtor to the payee, whether direct or contingent, due or to become due, or now or hereafter contracted or existing:

See Exhibit A attached hereto and made a part hereof.

The Debtor hereby gives the payee or holder hereof (the "Secured Party" herein) authority to sell, assign, lease or otherwise dispose of the Collateral, or any part thereof, in the event of default in the payment of any of the obligations hereunder or in the event said Collateral depreciates in value, at public or private sale, provided the Secured Party shall give Debtor at least five (5) days' prior written notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof, is to be made unless the Collateral is of a type customarily sold on a recognized market. The Secured Party may buy at any public sale, and if the Collateral is of a type customarily sold in a recognized market or is a type which is the subject of widely distributed standard price quotations, he may buy at private sale. The net proceeds realized upon any such disposition, after deduction for the expenses of holding, preparing for sale, selling or the like and the reasonable attorney's fees and legal expenses incurred by Secured Party, shall be applied to the payment of the liabilities and obligations hereunder as the Secured Party shall elect. The Secured Party will account to the Debtor for any surplus realized on such disposition and the Debtor shall remain liable for any deficiency, which Debtor promises to pay forthwith. The Secured Party in possession may, after default, propose to retain the Collateral in satisfaction of the liabilities and obligations hereunder, as provided under the Uniform Commercial Code of Illinois.

Without waiver of any remedies available hereunder, Secured Party, at his option, may in the event the Collateral shall depreciate in value or become subject to any adverse lien or encumbrance, demand and accept from the Debtor, and the Debtor agrees on demand to transfer, pledge and deliver to the Secured Party, new or additional collateral so that the aggregate of all Collateral pledged from time to time hereunder shall be not less in value than the original value of the Collateral first deposited hereunder.

If default be made in the payment of any of the said installments of principal or of interest or in the Debtor's performance of any other obligation under this Note, the principal sum above mentioned, or any balance that may appear to be unpaid thereon, together with all unpaid interest thereon, shall, at the option of the legal holder hereof, become immediately due and payable, without notice, and shall be collectible immediately or at any time after such default, anything hereinbefore contained to the contrary notwithstanding. In the event of default, the payee or legal holder hereof shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

If this Note is signed by more than one person, the obligations and authorizations hereunder shall be joint and several.

All parties hereto severally waive presentment for payment, notice of dishonor and protest.

ATTEST:

By: - - - - -

Secretary

AERO PLATING WORKS, INC.

BY: - - - - -

President

*Fill out either (a) or (b) and strike out the other of (a) and (b).

△ X2

EXHIBIT A

- (1) Radiant Products Oven
- (1) Radiant Products Nickel Dipping Line #1
- (4) Anode Product Filters
- (2) Industrial De-lonizers
- (1) Clinton Rectifier
- (2) Chicago Corrosion Control glass liners
for steel tanks
- (1) Serfilco Horizontal Pump
- (1) Serfilco Motor Unit
- (1) Fairbanks Morse Scale
- Thomas Skid Boxes
- (1) Anode Products Feeder Unit
- (2) Gordon Red Devil Sump Pumps
- (2) 1 1/8 H.P. Roof Blowers
- (1) ESKA Snow Blower
- (1) Nickel Dipping Line #2
- (3) Clinton Rectifiers Model S2012
Serial Nos. 27921, 27876, 23711
- (1) 1975 Rhode Trailer
- (1) Clarke Lift Truck
- (1) 36" Clarke Lift Truck
- (1) TRAX Trailer

COLLATERAL NOTE — INSTALLMENT

\$ 118,030.66

June 30

19 79

For Value Received, the undersigned (the "Debtor" herein) promises to pay to the order of
LOUIS J. MAIORANO — — — — — the principal sum of
One Hundred Eighteen Thousand Thirty and 66/100ths (\$118,030.66) Dollars

~~*(a) and interest from — — — — — on the balance of principal remaining from time to time unpaid at the rate of — — — — — per cent per annum, such principal sum and interest to be payable in installments as follows: — — — — — Dollars on the — — — — — day of — — — — —, 19 — — — — — Dollars on the — — — — — day of each month thereafter for — — — — — consecutive months, with a final payment of principal and interest of — — — — — Dollars on the — — — — — day of — — — — —, 19 — — — — —*~~

*(b) payable in installments as follows:

~~— — — — — Dollars
on the — — — — — day of — — — — —, 19 — — — — — Dollars
on the — — — — — day of each month beginning on the — — — — — day of — — — — —, 19 — — — — —
for — — — — — months succeeding, and a final payment of — — — — — Dollars
on the — — — — — day of — — — — —, 19 — — — — —, with interest on the balance of principal remaining from time to time unpaid at the rate of — — — — — per cent per annum, payable on the due dates for installments of principal as aforesaid.~~

~~in weekly installments of Two Hundred Eighty-Eight and 00/100ths (\$288.00) each week including interest at the rate of~~

~~All payments on account of the indebtedness represented by this Note shall be applied first to accrued and unpaid interest and the remainder to principal. Any installments of principal not paid when due shall bear interest after maturity at the rate of seven per cent per annum. Payments of both principal and interest shall be made at — — — — — or such other place as the legal holder hereof may from time to time in writing appoint.~~

The Debtor hereby grants a security interest in and transfers, pledges and delivers to the payee the following described property (the "Collateral" herein) to secure the payment of this Note and to secure all future advances to or for the account of the Debtor, including advances for taxes, levies, insurance, repairs to or maintenance of the Collateral, made by the payee, at his option, and all other present or future liabilities of the Debtor, to the payee, whether direct or contingent, due or to become due, or now or hereafter contracted or existing:

See Exhibit A attached hereto and made a part hereof.

The Debtor hereby gives the payee or holder hereof (the "Secured Party" herein) authority to sell, assign, lease or otherwise dispose of the Collateral, or any part thereof, in the event of default in the payment of any of the obligations hereunder or in the event said Collateral depreciates in value, at public or private sale, provided the Secured Party shall give Debtor at least five (5) days' prior written notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made unless the Collateral is of a type customarily sold on a recognized market. The Secured Party may buy at any public sale, and if the Collateral is of a type customarily sold in a recognized market or is a type which is the subject of widely distributed standard price quotations, he may buy at private sale. The net proceeds realized upon any such disposition, after deduction for the expenses of holding, preparing for sale, selling or the like and the reasonable attorney's fees and legal expenses incurred by Secured Party, shall be applied to the payment of the liabilities and obligations hereunder as the Secured Party shall elect. The Secured Party will account to the Debtor for any surplus realized on such disposition and the Debtor shall remain liable for any deficiency, which Debtor promises to pay forthwith. The Secured Party in possession may, after default, propose to retain the Collateral in satisfaction of the liabilities and obligations hereunder, as provided under the Uniform Commercial Code of Illinois.

Without waiver of any remedies available hereunder, Secured Party, at his option, may, in the event the Collateral shall depreciate in value or become subject to any adverse lien or encumbrance, demand and accept from the Debtor, and the Debtor agrees on demand to transfer, pledge and deliver to the Secured Party, new or additional collateral so that the aggregate of all Collateral pledged from time to time hereunder shall be not less in value than the original value of the Collateral first deposited hereunder.

If default be made in the payment of any of the said installments of principal or of interest or in the Debtor's performance of any other obligation under this Note, the principal sum above mentioned, or any balance that may appear to be unpaid thereon, together with all unpaid interest thereon, shall, at the option of the legal holder hereof, become immediately due and payable, without notice, and shall be collectible immediately or at any time after such default, anything hereinbefore contained to the contrary notwithstanding. In the event of default, the payee or legal holder hereof shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

If this Note is signed by more than one person, the obligations and authorizations hereunder shall be joint and several.

All parties hereto severally waive presentment for payment, notice of dishonor and protest.

ATTEST:

By:

Secretary

AERO PLATING WORKS, INC:

By:

President

*Fill out either (a) or (b) and strike out the other of (a) and (b).

Δ X 3

EXHIBIT A

- (1) Radiant Products Oven
- (1) Radiant Products Nickel Dipping Line #1
- (4) Anode Product Filters
- (2) Industrial De-ionizers
- (1) Clinton Rectifier
- (2) Chicago Corrosion Control glass liners
for steel tanks
- (1) Serfilco Horizontal Pump
- (1) Serfilco Motor Unit
- (1) Fairbanks Morse Scale
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- (1) Anode Products Feeder Unit
- (2) Gordon Red Devil Sump Pumps
- (2) 1 1/8 H.P. Roof Blowers
- (1) ESKA Snow Blower
- (1) Nickel Dipping Line #2
- (3) Clinton Rectifiers Model S2012
Serial Nos. 27921, 27876, 23711
- ✓ (1) 1975 Rhode Trailer
- (1) Clarke Lift Truck
- (1) 36" Clarke Lift Truck
- (1) TRAX Trailer

INDUSTRIAL BUILDING LEASE

DATE OF LEASE	TERM OF LEASE		MONTHLY RENT
January 2, 1979	BEGINNING	ENDING	\$2,200.00
	Jan. 1, 1979	Dec. 31, 1982	
Location of Premises: 1860 Elston Avenue and 1317-19 North Avenue, Chicago, Illinois			
Purpose: All lawful business activities consistent and in conformity with zoning and other ordinances and laws.			

LESSEE
NAME • AERO PLATING WORKS, INC.
ADDRESS • 1860 Elston Avenue
Chicago, Illinois 60622

LESSOR
NAME AND • Louis J. Maiorano
BUSINESS •
ADDRESS • 1860 Elston Avenue
Chicago, Illinois 606

In consideration of the mutual covenants and agreements herein stated, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor solely for the above purpose the premises designated above (the "Premises"), together with the appurtenances thereto, for the above Term.

RENT

1. Lessee shall pay Lessor or Lessor's agent as rent for the Premises the sum stated above, monthly in advance, until termination of this lease, at Lessor's address stated above or such other address as Lessor may designate in writing.

CONDITION AND UPKEEP OF PREMISES

2. Lessee has examined and knows the condition of the Premises and has received the same in good order and repair, and acknowledges that no representations as to the condition and repair thereof have been made by Lessor, or his agent, prior to or at the execution of this lease that are not herein expressed; Lessee will keep the Premises including all appurtenances, in good repair, replacing all broken glass with glass of same size and quality as that broken, and will replace all damaged plumbing fixtures with others of equal quality and will keep the Premises, including adjoining alleys, in a clean and healthful condition according to the applicable municipal ordinances and the direction of the proper public officers during the term of this lease at Lessee's expense, and will without injury to the roof, remove all snow and ice from the same when necessary, and will remove the snow and ice from the sidewalk abutting the Premises; and upon the termination of this lease, in any way, will yield up the Premises to Lessor, in good condition and repair, loss by fire and ordinary wear excepted, and will deliver the keys therefor at the place of payment of said rent.

LESSEE NOT TO MISUSE; SUBLET; ASSIGNMENT

3. Lessee will not allow the Premises to be used for any purpose that will increase the rate of insurance thereon, nor for any purpose other than that hereinbefore specified, and will not load floors with machinery or goods beyond the floor load rating prescribed by applicable municipal ordinances, and will not allow the Premises to be occupied in whole, or in part, by any other person, and will not sublet the same or any part thereof, nor assign this lease without in each case the written consent of the Lessor first had, and Lessee will not permit any transfer by operation of law of the interest in the Premises acquired through this lease, and will not permit the Premises to be used for any unlawful purpose, or for any purpose that will injure the reputation of the building or increase the fire hazard of the building, or disturb the peace or the neighborhood, and will not permit the same to remain vacant or unoccupied for more than ten consecutive days; and will not allow any signs, cards or placards to be posted, or placed thereon, nor permit alteration of or addition to any part of the Premises, except by written consent of Lessor; all alterations, additions to the Premises shall remain for the benefit of Lessor unless otherwise provided in the contract aforesaid.

MECHANIC'S LIEN

4. Lessee will not permit any mechanic's lien or liens to be placed upon the Premises or any building improvement thereon during the term hereof, and in case of the filing of any such lien Lessee will promptly pay the same. If default in payment thereof shall continue for thirty (30) days after written notice thereof from Lessor to the Lessee, the Lessor shall have the right and privilege at Lessor's option of paying the same or any part thereof without inquiry as to the validity thereof, and any amounts so paid, including expenses and interest, shall be so much additional indebtedness hereunder due from Lessee to Lessor and shall be repaid to Lessor immediately on rendition of bill therefor.

INDEMNITY FOR ACCIDENTS

5. Lessee covenants and agrees that he will protect and save and keep the Lessor forever harmless, indemnified against and from any penalty or damages or charges imposed for any violation of any applicable ordinances, whether occasioned by the neglect of Lessee or those holding under Lessee, and that Lessee at all times protect, indemnify and save and keep harmless the Lessor against and from any and all loss, damage or expense, arising out of or from any accident or other occurrence on or about the Premises, or injury to any person or property whatsoever or whatsoever and will protect, indemnify and save and keep harmless the Lessor against and from any and all claims and against and from any and all loss, cost, damage or expense arising out of any failure of Lessee in any respect to comply with and perform all the requirements and provisions hereof.

NON-LIABILITY OF LESSOR

6. Lessor shall not be liable for any damage occasioned by failure to keep the Premises in repair, or for any damage done or occasioned by or from plumbing, gas, water, sprinkler, steam or other pipe, sewerage or the bursting, leaking or running of any pipes, tank or plumbing fixtures, in, above, upon or under the Premises or any building or improvement thereon nor for any damage occasioned by water, snow or ice upon or coming through the roof, skylights, trap door or otherwise, nor for any damages arising from a neglect of any owners or occupants of adjacent or contiguous property.

WATER, GAS AND ELECTRIC CHARGES

7. Lessee will pay, in addition to the rent above specified all water rents, gas and electric light and power bills taxed, levied or charged on the Premises, for and during the time for which this lease is in effect, and in case said water rents, and bills for gas, electric light and power shall not be paid when due, Lessor shall have the right to pay the same, which amounts so paid, together with any sums paid by Lessor to keep the Premises in a clean and healthy condition, as above specified, are declared to be so much additional rent payable by Lessee to Lessor.

EX 4

17. Lessee shall pay as additional rent for the premises all taxes and assessments, general and special, water taxes and all other impositions of every kind and nature whatsoever which may be levied, assessed or imposed upon the premises, or any part thereof, or upon any improvements at any time situated thereon, accruing or becoming due and payable during the term of this lease. Lessee shall have the right to contest assessments or taxes. Lessee shall not be required to pay any such charges or taxes so long as the tenant shall in good faith and with due diligence contest the same or the validity thereof by appropriate legal proceedings which shall have the effect of preventing the collection thereof to the extent and so long as the same may be so contested; provided that, pending any such proceedings, the Lessee shall give the Lessor such security as may be deemed satisfactory to Lessor to insure the payment of any such contested taxes or other charges. All expenses of such contest proceedings shall be paid for by the Lessee.

18. At the term of this lease the Lessee shall procure and maintain policies of insurance covering the lease premises in the same amounts and for the same risks as the Lessee presently maintains. Such insurance shall at all times be in companies and in form satisfactory to the Lessor and any mortgagee of the Lessor and shall contain standard mortgage clauses satisfactory to the Lessor's mortgagee, if any. The original insurance policies, or certificates thereof satisfactory to the Lessor, together with satisfactory evidence of the payment of premiums shall be deposited with the Lessor not less than 30 days prior to the end of each term of any such insurance policy.

19. Anything herein to the contrary notwithstanding, it is understood and agreed that the Lessee shall at no time have any obligation to maintain the premises in a state of repair better than the state of which exists as of the date of the commencement of this lease.

20. Lessor and Lessee hereby each waives and releases all rights and all rights of all persons claiming by or through it or him, expressly including the rights of insurance carriers arising by subrogation, to recovery from the other of any loss, expense or liability on account of any loss of or damage or injury (including death) to any person or property, but only to the extent that each insurance company shall have agreed that the insurance shall remain in full force and effect notwithstanding such waiver and only to the extent that reimbursement for indemnification against such loss, expense or liability shall be received from the insurance company or companies having agreed to permit such waiver, each party hereby agreeing to obtain the aforesaid agreement of each insurance company to the extent that the same can be obtained.

21. This lease shall be construed to be a "net lease" and the Lessee shall pay to Lessor absolutely net throughout the term hereof, the rent and other payments due hereunder, free of any deductions of any kind and without any abatement, deduction or set-off. Except as herein otherwise expressly provided, the Lessee shall pay all costs, charges and expenses of every kind and nature whatsoever against or in connection with the premises which may arise or become due during the term of this lease and which, except for the execution and delivery hereof, would or could have become payable by the landlord; except, however, that the tenant shall not be required to make any interest or principal payments on or required under any mortgage on the fee of the premises.

22. Lessor hereby grants to Lessee an option, exercisable by written notice given to Lessor at any time prior to four (4) months before the expiration of the term of this lease, to purchase the premises at the following purchase price and under the following terms and conditions:

(a) The purchase price for the premises shall be the fair market value thereof as agreed upon by Lessor and Lessee. In the event Lessor and Lessee cannot agree upon a fair market value within thirty (30) days from the date of Lessee's notice that it intends to exercise the option to purchase the premises, the Lessee shall select an independent M.A.I. appraiser (at its expense) and shall give notice to the Lessor of the name and qualifications of such appraiser. If the Lessor does not object to the appraiser named by the Lessee within twenty (20) days of the date Lessor is given notice of the name and qualifications of the appraiser selected by the Lessee, by naming a different M.A.I. appraiser, the determination of fair market value of the appraiser selected by the Lessee shall be conclusive and binding upon the Lessee and the Lessor. If the Lessor objects to the appraiser selected by Lessee as aforesaid, Lessor shall hire another M.A.I. appraiser at his expense and shall give notice to the Lessee of the name and qualifications of the Lessor's appraiser. The two (2) appraisers so named shall, within twenty (20) days of the date Lessor selects an appraiser, name a third appraiser. The cost of the third appraiser shall be divided equally between Lessor and Lessee. In the event the three (3) appraisers cannot agree on the value of the premises within twenty (20) days of the appointment of the last of the three (3) appraisers to be appointed, the purchase price of the premises shall be the mean of the fair market values given by the three (3) appraisers.

(b) The purchase price shall be paid in cash on the last day of the term of this lease.

(c) Lessor shall convey marketable title by general warranty deed in recordable form, with State of Illinois County of Cook revenue stamps affixed thereto, subject to then current real estate taxes (with such taxes to be prorated between Lessor and Lessee) and Lessor shall furnish to Lessee, at Lessor's expense, title insurance issued by a responsible title insurance company in the amount of the purchase price, showing fee simple title to be vested in Lessee subject to the terms and conditions set forth in this subparagraph and subject also to the conditions and exceptions of the title insurance policy.

Where in this instrument masculine pronouns are used, or words indicating the singular number appear, such words shall be considered as if feminine or neuter pronouns or words indicating the plural number had been used, where the context indicates the propriety of such use.

Where in this instrument rights are given to either Lessor or Lessee, such rights shall extend to the agents, employees, or representatives of such persons.

If this instrument is executed by a corporation, such execution has been authorized by a duly adopted resolution of the Board of Directors of such corporation.

This lease consists of 5 pages numbered 1 to 5, including a rider consisting of 2 pages identified by Lessor and Lessee.

IN TESTIMONY WHEREOF, the parties hereto have executed this instrument this day and year first above written
AERO PLATING WORKS, INC.

BY: [Signature] (SEAL)
President

[Signature]
Lessor

Attest:

[Signature] (SEAL)
Secretary

[Signature] (SEAL)
Lessee

ASSIGNMENT BY LESSOR

On this _____, 19____, for value received, Lessor hereby transfers, assigns and sets over to _____ all right, title and interest in and to the above

Lease and the rent thereby reserved, except rent due and payable prior to _____, 19____

GUARANTEE

On this _____, 19____, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Guarantor hereby guarantees the payment of rent and performance by Lessee, Lessee's heirs, executors, administrators, successors or assigns of all covenants and agreements of the above Lease.

DECEMBER 10, 1982


UNDERSIGNED AS LESSOR HEREBY

AGREES TO EXTEND THE LEASE.

TERM FOR AERO PLATING WORKS INC.

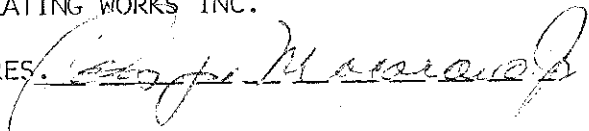
FROM JANUARY 1, 1983 TO DECEMBER 31, 1984.

APON THE TERM & CONDITIONS.


LESSOR.

ACCEPTED.

AERO PLATING WORKS INC.

BY: PRES. 

INDUSTRIAL BUILDING LEASE

DATE OF LEASE	TERM OF LEASE		MONTHLY RENT
	BEGINNING	ENDING	
January 2, 1979	Jan. 1, 1979	Dec. 31, 1982	\$2,200.00
Location of Premises: 1860 Elston Avenue and 1317-19 North Avenue, Chicago, Illinois			
Purpose: All lawful business activities consistent and in conformity with zoning and other ordinances and laws.			

LESSEE
NAME • AERO PLATING WORKS, INC.
ADDRESS • 1860 Elston Avenue
Chicago, Illinois 60622

LESSOR
NAME AND • Louis J. Maiorano
BUSINESS •
ADDRESS • 1860 Elston Avenue
Chicago, Illinois 60622

In consideration of the mutual covenants and agreements herein stated, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor solely for the above purpose the premises designated above (the "Premises"), together with the appurtenances thereto, for the above Term.

RENT

1. Lessee shall pay Lessor or Lessor's agent as rent for the Premises the sum stated above, money in advance, until termination of this lease, at Lessor's address stated above or such other address as Lessor may designate in writing.

CONDITION AND UPKEEP OF PREMISES

2. Lessee has examined and knows the condition of the Premises and has received the same in good order and repair, and acknowledges that no representations as to the condition and repair thereof have been made by Lessor, or his agent, prior to or at the execution of this lease that are not herein expressed. Lessee will keep the Premises including all appurtenances, in good repair, replacing all broken glass with glass of the same size and quality as that broken, and will replace all damaged plumbing fixtures with others of equal quality, and will keep the Premises, including adjoining alleys, in a clean and healthful condition according to the applicable municipal ordinances and the direction of the proper public officers during the term of this lease. Lessee's expense, and will without injury to the roof, remove all snow and ice from the same when necessary, and will remove the snow and ice from the sidewalk abutting the Premises; and upon the termination of the lease, in any way, will yield up the Premises to Lessor, in good condition and repair, loss by fire and ordinary wear excepted, and will deliver the keys therefor at the place of payment of said rent.

LESSEE NOT TO MISUSE; SUBLET; ASSIGNMENT

3. Lessee will not allow the Premises to be used for any purpose that will increase the rate of insurance thereon, nor for any purpose other than that hereinbefore specified, and will not load floors with machines or goods beyond the floor load rating prescribed by applicable municipal ordinances, and will not allow the Premises to be occupied in whole, or in part, by any other person, and will not sublet the same or any part thereof, nor assign this lease without in each case the written consent of the Lessor first had, and Lessee will not permit any transfer by operation of law of the interest in the Premises acquired through this lease, and will not permit the Premises to be used for any unlawful purpose, or for any purpose that will injure the reputation of the building or increase the fire hazard of the building, or disturb the tenants or the neighborhood, and will not permit the same to remain vacant or unoccupied for more than ten consecutive days; and will not allow any signs, cards or placards to be posted, or placed thereon, nor permit any alteration of or addition to any part of the Premises, except by written consent of Lessor; all alterations or additions to the Premises shall remain for the benefit of Lessor unless otherwise provided in the consent aforesaid.

MECHANIC'S LIEN

4. Lessee will not permit any mechanic's lien or liens to be placed upon the Premises or any building or improvement thereon during the term hereof, and in case of the filing of any such lien Lessee will promptly remove the same. If default in payment thereof shall continue for thirty (30) days after written notice thereof from Lessor to the Lessee, the Lessor shall have the right and privilege at Lessor's option of paying the same or any portion thereof without inquiry as to the validity thereof, and any amounts so paid, including expenses and interest, shall be so much additional indebtedness hereunder due from Lessee to Lessor and shall be repaid to Lessor immediately on rendition of bill therefor.

INDEMNITY FOR ACCIDENTS

5. Lessee covenants and agrees that he will protect and save and keep the Lessor forever harmless and indemnified against and from any penalty or damages or charges imposed for any violation of any laws or ordinances, whether occasioned by the neglect of Lessee or those holding under Lessee, and that Lessee will at all times protect, indemnify and save and keep harmless the Lessor against and from any and all loss, cost, damage or expense, arising out of or from any accident or other occurrence on or about the Premises, causing injury to any person or property whatsoever or whatsoever and will protect, indemnify and save and keep harmless the Lessor against and from any and all claims and against and from any and all loss, cost, damage or expense arising out of any failure of Lessee in any respect to comply with and perform all the requirements and provisions hereof.

NON-LIABILITY OF LESSOR

6. Lessor shall not be liable for any damage occasioned by failure to keep the Premises in repair, or for any damage done or occasioned by or from plumbing, gas, water, sprinkler, steam or other pipes, sewerage or the bursting, leaking or running of any pipes, tank or plumbing fixtures, in, above, upon or about the Premises or any building or improvement thereon nor for any damage occasioned by water, snow or ice being upon or coming through the roof, skylights, trap door or otherwise, nor for any damages arising from acts or neglect of any owners or occupants of adjacent or contiguous property.

WATER, GAS AND ELECTRIC CHARGES

7. Lessee will pay, in addition to the rent above specified all water rents, gas and electric light and power bills taxed, levied or charged on the Premises, for and during the time for which this lease is granted, and in case said water rents, and bills for gas, electric light and power shall not be paid when due, Lessor shall have the right to pay the same, which amounts so paid, together with any sums paid by Lessor to keep the Premises in a clean and healthy condition, as above specified, are declared to be so much additional rent payable by Lessee with the installment of rent next due thereafter.

17. Lessee shall pay as additional rent for the premises all taxes and assessments, general and special, water taxes and all other impositions of every kind and nature whatsoever which may be levied, assessed or imposed upon the premises, or any part thereof, or upon any improvements at any time situated thereon, accruing or becoming due and payable during the term of this lease. Lessee shall have the right to contest assessments or taxes. Lessee shall not be required to pay any such charges or taxes so long as the tenant shall in good faith and with due diligence contest the same or the validity thereof by appropriate legal proceedings which shall have the effect of preventing the collection thereof to the extent and so long as the same may be so contested; provided that, pending any such proceedings, the Lessee shall give the Lessor such security as may be deemed satisfactory to Lessor to insure the payment of any such contested taxes or other charges. All expenses of such contest proceedings shall be paid for by the Lessee.

18. At the term of this lease the Lessee shall procure and maintain policies of insurance covering the lease premises in the same amounts and for the same risks as the Lessee presently maintains. Such insurance shall at all times be in companies and in form satisfactory to the Lessor and any mortgagee of the Lessor and shall contain standard mortgage clauses satisfactory to the Lessor's mortgagee, if any. The original insurance policies, or certificates thereof satisfactory to the Lessor, together with satisfactory evidence of the payment of premiums shall be deposited with the Lessor not less than 30 days prior to the end of each term of any such insurance policy.

19. Anything herein to the contrary notwithstanding, it is understood and agreed that the Lessee shall at no time have any obligation to maintain the premises in a state of repair better than the state of which exists as of the date of the commencement of this lease.

20. Lessor and Lessee hereby each waives and releases all rights and all rights of all persons claiming by or through it or him, expressly including the rights of insurance carriers arising by subrogation, to recovery from the other of any loss, expense or liability on account of any loss of or damage or injury (including death) to any person or property, but only to the extent that each insurance company shall have agreed that the insurance shall remain in full force and effect notwithstanding such waiver and only to the extent that reimbursement for indemnification against such loss, expense or liability shall be received from the insurance company or companies having agreed to permit such waiver, each party hereby agreeing to obtain the aforesaid agreement of each insurance company to the extent that the same can be obtained.

21. This lease shall be construed to be a "net lease" and the Lessee shall pay to Lessor absolutely net throughout the term hereof, the rent and other payments due hereunder, free of any deductions of any kind and without any abatement, deduction or set-off. Except as herein otherwise expressly provided, the Lessee shall pay all costs, charges and expenses of every kind and nature whatsoever against or in connection with the premises which may arise or become due during the term of this lease and which, except for the execution and delivery hereof, would or could have become payable by the landlord; except, however, that the tenant shall not be required to make any interest or principal payments on or required under any mortgage on the fee of the premises.

22. Lessor hereby grants to Lessee an option, exercisable by written notice given to Lessor at any time prior to four (4) months before the expiration of the term of this lease, to purchase the premises at the following purchase price and under the following terms and conditions:

(a) The purchase price for the premises shall be the fair market value thereof as agreed upon by Lessor and Lessee. In the event Lessor and Lessee cannot agree upon a fair market value within thirty (30) days from the date of Lessee's notice that it intends to exercise the option to purchase the premises, the Lessee shall select an independent M.A.I. appraiser (at its expense) and shall give notice to the Lessor of the name and qualifications of such appraiser. If the Lessor does not object to the appraiser named by the Lessee within twenty (20) days of the date Lessor is given notice of the name and qualifications of the appraiser selected by the Lessee, by naming a different M.A.I. appraiser, the determination of fair market value of the appraiser selected by the Lessee shall be conclusive and binding upon the Lessee and the Lessor. If the Lessor objects to the appraiser selected by Lessee as aforesaid, Lessor shall hire another M.A.I. appraiser at his expense and shall give notice to the Lessee of the name and qualifications of the Lessor's appraiser. The two (2) appraisers so named shall, within twenty (20) days of the date Lessor selects an appraiser, name a third appraiser. The cost of the third appraiser shall be divided equally between Lessor and Lessee. In the event the three (3) appraisers cannot agree on the value of the premises within twenty (20) days of the appointment of the last of the three (3) appraisers to be appointed, the purchase price of the premises shall be the mean of the fair market values given by the three (3) appraisers.

(b) The purchase price shall be paid in cash on the last day of the term of this lease.

(c) Lessor shall convey marketable title by general warranty deed in recordable form, with State of Illinois County of Cook revenue stamps affixed thereto, subject to then current real estate taxes (with such taxes to be prorated between Lessor and Lessee) and Lessor shall furnish to Lessee, at Lessor's expense, title insurance issued by a responsible title insurance company in the amount of the purchase price, showing fee simple title to be vested in Lessee subject to the terms and conditions set forth in this subparagraph and subject also to the conditions and exceptions of the title insurance policy.

Where in this instrument masculine pronouns are used, or words indicating the singular number appear, such words shall be considered as if feminine or neuter pronouns or words indicating the plural number had been used, where the context indicates the propriety of such use.

Where in this instrument rights are given to either Lessor or Lessee, such rights shall extend to the agents, employees, or representatives of such persons.

If this instrument is executed by a corporation, such execution has been authorized by a duly adopted resolution of the Board of Directors of such corporation.

This lease consists of 5 pages numbered 1 to 5, including a rider consisting of 2 pages, identified by Lessor and Lessee.

IN TESTIMONY WHEREOF, the parties hereto have executed this instrument this day and year first above written.

AERO PLATING WORKS, INC.

By: [Signature] (SEAL)
President

Lessor

Attest: _____ (SEAL)

Secretary

Lessee

ASSIGNMENT BY LESSOR

On this _____, 19____, for value received, Lessor hereby transfers, assigns and sets over to _____ all right, title and interest in and to the above Lease and the rent thereby reserved, except rent due and payable prior to _____, 19____.

(SEAL)

GUARANTEE

On this _____, 19____, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Guarantor hereby guarantees the payment of rent and performance by Lessee, Lessee's heirs, executors, administrators, successors or assigns of all covenants and agreements of the above Lease.

(SEAL)

ACTION BY UNANIMOUS WRITTEN CONSENT

OF THE BOARD OF DIRECTORS OF

AERO PLATING WORKS, INC.

The undersigned, being all of the members of the Board of Directors of AERO PLATING WORKS, INC., do hereby adopt the following resolution:

WHEREAS, this company is currently indebted to LOUIS J. MAIORANO in the amount of Three Hundred Twenty-Four Thousand Two Hundred Forty-Eight and 19/100ths Dollars (\$324,248.19); and

WHEREAS, LOUIS J. MAIORANO has offered to transfer to the capital of the company One Hundred Twenty-Five Thousand Nineteen and 33/100ths Dollars (\$125,019.33) in cancellation of a portion of the indebtedness of the company to LOUIS J. MAIORANO in like amount; and

WHEREAS, LOUIS J. MAIORANO and the company desire to evidence a portion of the remaining indebtedness to LOUIS J. MAIORANO in the form of the company's note to him in the amount of One Hundred Fifty Thousand and 00/100ths Dollars (\$150,000.00) secured by a chattel mortgage on certain of the assets of the company; and

WHEREAS, the company and LOUIS J. MAIORANO desire to enter into a consulting agreement; and

WHEREAS, the company desires to lease certain property commonly known as 1860 North Elston Avenue and 1317-19 North Avenue, Chicago, Illinois from LOUIS J. MAIORANO; and

WHEREAS, LOUIS J. MAIORANO has offered to donate to the capital of this company the nine hundred (900) shares of the capital stock owned by him; and


WHEREAS, EVA D. MAIORANO has offered to donate to the capital of the company the one (1) share of the capital stock owned by her;

NOW, THEREFORE, be it resolved:

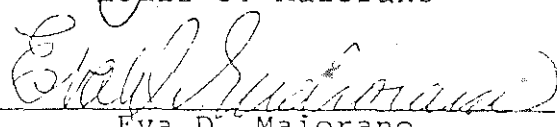
1. The offer of LOUIS J. MAIORANO to contribute to the capital of the company the sum of One Hundred Twenty-Five Thousand Nineteen and 33/100ths Dollars (\$125,019.33) in the form of a reduction of the indebtedness of the company to LOUIS J. MAIORANO in like amount is hereby accepted and the same amount shall be added to the paid-in-suplus of the company.

2. The offer of LOUIS J. MAIORANO to contribute to the capital of the company the nine hundred (900) common shares of the company owned by him is hereby accepted and said shares shall remain in the treasury of the company as treasury shares until the further action of the Board of Directors.
3. The offer of EVA D. MAIORANO to contribute to the capital of the company the one (1) common share of the company owned by her is hereby accepted and said share shall remain in the treasury of the company as treasury shares until the further action of the Board of Directors.
4. To memorialize a portion of indebtedness of the company to LOUIS J. MAIORANO, the company shall execute and deliver to LOUIS J. MAIORANO its collateral note secured by the assets of the company listed therein, which such note is attached hereto as Exhibit A.
5. This company shall lease the property commonly known as 1860 North Elston Avenue and 1317-19 North Avenue, Chicago, Illinois from LOUIS J. MAIORANO for a term ending December 31, 1982, on such terms and conditions as set forth in such lease a copy of which is attached hereto as Exhibit B.
6. The company shall enter into a consulting agreement with LOUIS J. MAIORANO in the form of consulting agreement attached hereto as Exhibit C.
7. The principal officers of the company shall execute such notes, leases, contracts, UCC Financial Statements and reports to the Secretary of State of Illinois as required by law, to effectuate the foregoing resolution as such officers may deem necessary and proper.

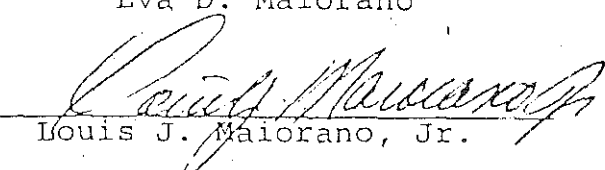
Dated: January 2, 1979.



Louis J. Maiorano



Eva D. Maiorano



Louis J. Maiorano, Jr.

PERSONAL FINANCIAL STATEMENT

IMPORTANT: Read these directions before completing this Statement.

- ☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections 1 and 3.
- ☐ If you are applying for joint credit with another person, complete all Sections providing information in Section 2 about the joint applicant.
- ☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as a basis for repayment of the credit requested, complete all Sections providing information in Section 2 about the person whose alimony, support, or maintenance payments or income or assets you are relying.
- ☐ If this statement relates to your guaranty of the indebtedness of other person(s), firm(s) or corporation(s), complete Sections 1 and 3.

**TO: FIRST NATIONAL BANK OF DEERFIELD
725 WAUKEGAN ROAD
DEERFIELD, ILLINOIS 60015**

SECTION 1 - INDIVIDUAL INFORMATION		SECTION 2 - OTHER PARTY INFORMATION	
(Type or Print)		(Type or Print)	
Name	LOUIS J. MAIORANO JR.	Name	
Residence Address	422 MILL VALLEY	Residence Address	
City, State & Zip	PALATINE, ILL.	City, State & Zip	
Position or Occupation	SALES MAN	Position or Occupation	
Business Name	RID	Business Name	
Business Address	4831 S. WHIPPLE	Business Address	
City, State & Zip	CHICAGO ILL 60632	City, State & Zip	
Res Phone	359-6105	Res Phone	
Bus Phone	523-0784	Bus Phone	

SECTION 3 - STATEMENT OF FINANCIAL CONDITION AS OF _____ 19 ____			
ASSETS (Do not include Assets of doubtful value)	In Dollars (Omit cents)	LIABILITIES	In Dollars (Omit cents)
Cash on hand and in banks	200	Notes payable to banks - secured	6,750
U.S. Gov't. & Marketable Securities - see Schedule A	—	Notes payable to banks - unsecured	—
Non-Marketable Securities - See Schedule B	—	Due to brokers	—
Securities held by broker in margin accounts	—	Amounts payable to others - secured	65,000
Restricted or control stocks	—	Amounts payable to others - unsecured	—
Partial interest in Real Estate Equities - see Schedule C	—	Accounts and bills due	—
Real Estate Owned - see Schedule D	135,000	Unpaid income tax	—
Loans Receivable	—	Other unpaid taxes and interest	—
Automobiles and other personal property	—	Real estate mortgages payable - see Schedule D	—
Cash value-life insurance-see Schedule E	—	Other debts - itemize	—
Other assets - itemize	None		
		TOTAL LIABILITIES	137,000
		NET WORTH	—
TOTAL ASSETS	155,000	TOTAL LIAB. AND NET WORTH	155,000

SOURCES OF INCOME FOR YEAR ENDED _____, 19__		PERSONAL INFORMATION	
Salary, bonuses & commissions	\$ 52,000 ^{20%} / ₁₀₀	Do you have a will?	NO if so, name of executor
Dividends		Are you a partner or officer in any other venture? If so, describe	NO
Real estate income		Are you obligated to pay alimony, child support or separate maintenance payments? If so, describe	NO
Other income (Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation)		Are any assets pledged other than as described on schedules? If so, describe	NO
TOTAL	\$ 52,000 ^{20%} / ₁₀₀	Income tax settled through (date)	1985
CONTINGENT LIABILITIES		Are you a defendant in any suits or legal actions?	YES
Do you have any contingent liabilities? If so, describe		Personal bank accounts carried at	FIRST NATIONAL BANK OF DEERFIELD
As indorser, co-maker or guarantor?	\$	Have you ever been declared bankrupt? If so, describe	NO
On leases or contracts?	\$		
Legal claims	\$		
Other special debt	\$		
Amount of contested income tax liens	\$		

(COMPLETE SCHEDULES AND SIGN ON REVERSE SIDE)

Δ's EX 7

SCHEDULE A - U.S. GOVERNMENTS & MARKETABLE SECURITIES

Number of Shares or Face Value (Bonds)	Description	In Name Of	Are These Pledged?	Market Value

SCHEDULE B - NON-MARKETABLE SECURITIES

Number of Shares	Description	In Name Of	Are These Pledged?	Source of Value	Value

SCHEDULE C - PARTIAL INTERESTS IN REAL ESTATE EQUITIES

Address & Type Of Property	Title In Name Of	% Of Ownership	Date Acquired	Cost	Market Value	Mortgage Maturity	Mortgage Amount

SCHEDULE D - REAL ESTATE OWNED

Address & Type Of Property	Title In Name Of	Date Acquired	Cost	Market Value	Mortgage Maturity	Mortgage Amount
122 Hill Valley	JOHN & JANE (HUSBAND & WIFE)	1978	119,000 ⁰⁰	155,000 ⁰⁰	1998	143,000 ⁰⁰

SCHEDULE E - LIFE INSURANCE CARRIED, INCLUDING N.S.L.I. AND GROUP INSURANCE

Name Of Insurance Company	Owner Of Policy	Beneficiary	Face Amount	Policy Loans	Cash Surrender Value

SCHEDULE F - BANKS OR FINANCE COMPANIES WHERE CREDIT HAS BEEN OBTAINED

Name & Address Of Lender	Credit In The Name Of	Secured Or Unsecured?	Original Date	High Credit	Current Balance

The information contained in this statement is provided for the purpose of obtaining, or maintaining credit with you on behalf of the undersigned, or persons, firms or corporations in whose behalf the undersigned may either severally or jointly with others, execute a guaranty in your favor. Each undersigned understands that you are relying on the information provided herein (including the designation made as to ownership of property) in deciding to grant or continue credit. Each undersigned represents and warrants that the information provided is true and complete and that you may consider this statement as continuing to be true and correct until a written notice of a change is given to you by the undersigned. You are authorized to make all inquiries you deem necessary to verify the accuracy of the statements made herein, and to determine my/our creditworthiness. You are authorized to answer questions about your credit experience with me/us.

Signature (Individual) [Signature]
 S.S. N. 334-40-9951 Date of Birth 10/23/47
 Signature (Other Party) _____
 S.S. N. _____ Date of Birth _____

USE ADDITIONAL SCHEDULES IF NECESSARY

B. Neuberger

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF)
)
) DOCKET No. V-W-84-R-071
LOUIS J. MAIORANO, SR.)
LOUIS J. MAIORANO, JR.)
d/b/a AERO PLATING WORKS,)
)
Respondents)

PREHEARING EXCHANGE OF INFORMATION

Pursuant to Rules 22.19 and 22.21(d) of the Consolidated Rules of Practice, 40 C.F.R. 22.19(d) and 22.21(d), and the directive of April 15, 1985, Complainant submits the following information:

LIST OF WITNESSES

6-2929 ✓ Lynn Crivello, U.S. Environmental Protection Agency (formerly with Illinois Environmental Protection Agency) may be called to testify to the RCRA violations at the facility, and to provide a history of the environmental problems at AERO PLATING WORKS; and Louis J. Maiorano, Sr.'s involvement at the site.

James Figlewicz, Metropolitan Sanitary District, of Greater Chicago, may be called to testify to hazardous waste conditions at the facility and to provide a history of the environmental problems at AERO PLATING WORKS, including an incident involving the unreported spill of 1500 gallons of nickel plating solution.

look up in phone book ✓ Richard Suttich, Metropolitan Sanitary District of Greater Chicago, (MSD) may be called to testify to hazardous waste conditions at the facility and to provide a history of environmental problems at AERO PLATING WORKS, including the waste disposal practices of the company; and Louis J. Maiorano, Sr.'s involvement at the site.

Found written request for Suttich's appearance to →

Dr. Paul Lue - Hing

title?

100 East Erie

Chicago 60611

6-1772

✓ Wayne Pearson, U.S. Environmental Protection Agency, may be called to testify to the RCRA violations at AERO PLATING WORKS; the basis for the proposed administrative penalty and the present status of the facility's compliance.

NO →

✓ Mary Schraeder, Illinois Environmental Protection Agency, may be called to testify to conditions of AERO PLATING WORKS; sampling and photographs taken at the facility.

John Dougherty, and/or John Carey of the Illinois Environmental Protection Agency and the Illinois Attorney General's Office may be called to discuss sampling efforts at the facility.

Dr. David Homer
(contact Joe Boyle
6-4449 to
arrange)

✓ Complainant may also call an expert witness to testify to the toxic and hazardous characteristics of the waste at AERO PLATING WORKS, and the potential seriousness of harm presented by the waste. This expert witness has not been identified as of yet.

LIST OF EXHIBITS

w/ drawn

1. Notice of Hazardous Waste Activity by Aero Plating Works.
2. IEPA Observation Report dated September 15, 1983.
3. RCRA Inspection Report for inspection of September 15, 1983.
- ✓ 4. IEPA Special Analysis Form Nos. C001755 to C001760 for samples collected September 16, 1983 by Illinois Attorney General.
- ✓ 5. Special Analysis Form Nos. C001810 to C001814 for samples collected September 16, 1983 by Illinois Attorney General.
- ✓ 6. IEPA Chain of Custody.
7. Correspondence dated September 21, 1983 from IEPA to Louis Maiorano, Jr.
8. Correspondence dated September 22, 1983 from IEPA to Louis Merino, Jr.
9. Handwritten memorandum dated December 27, 1983.

DO
STIP.

*Hydr who prepared
the report*

10. RCRA Inspection Report and IEPA Observation Report for inspection of January 24, 1984.
11. IEPA Photographs January 24, 1984.
12. IEPA Letter Requesting U.S. EPA to Issue Compliance Order dated February 23, 1984.
- by page - what
w/letter
belong to* 13. IEPA Memorandum dated March 14, 1984.
14. IEPA Memorandum dated April 24, 1984.
15. IEPA Photographs dated August 28, 1984.
16. IEPA Photographs dated November 21, 1984.
17. Special Waste Analysis Report dated February 7, 1984.
18. Enforcement Notice Letter dated February 22, 1984.
19. IEPA Memorandum dated March 20, 1984.
20. USEPA Notification of Enforcement Action to IEPA dated September 11, 1984.
21. IEPA Memorandum dated September 19, 1984.
22. Hazardous Waste Shipment Paper dated September 28, 1984.
23. Closure Plan and Cover Letter dated March 13, 1985.
24. USEPA Letter dated May 6, 1985.
25. Articles of Incorporation dated December 24, 1951.
26. Certificate of Dissolution dated December 1, 1980.
- w/draw* 27. Dun & Bradstreet Report dated February 29, 1984.
28. Metroplitan Sanitary District of Greater Chicago (MSD) Memorandum dated July 7, 1971.
29. MSD Notice of Violation dated July 29, 1971.
30. MSD Notice of Violation dated January 25, 1973
31. MSD Notice of Violation dated December 11, 1973.

32. MSD Conciliation Agreement dated January 16, 1974.
33. MSD Notice of Violation dated December 5, 1975.
34. MSD Notice of Violation dated August 5, 1977.
35. MSD Conciliation Agreement dated September 8, 1977.
36. MSD Notice of Violation (NO. 79-540).
37. MSD Notice of Violation dated July 25, 1979.
38. MSD Notice of Violation dated August 10, 1979.
39. MSD Notice of Violation dated September 14, 1979 with accompanying memorandum dated September 10, 1979.
40. MSD Conciliation Agreement dated October 22, 1979.
41. MSD Notice of Violation dated December 12, 1979.
42. Handwritten notes dated January 28, 1980.
43. MSD Investigation Report dated June 4, 1980.
44. Correspondence dated June 16, 1980 from MSD to MSD.
45. Notice of Show Cause Hearing dated July 1, 1980.
46. MSD Transmittal letter for Board Meeting dated September 8, 1980.
47. MSD Field Survey of Sludge Removal Information dated January 9, 1981.
48. MSD Field Survey of Sludge Removal Information dated January 12, 1981.
49. MSD Investigation Report dated January 9, and 12, 1981.
50. MSD Inter-Office Memorandum dated January 26, 1981.
51. MSD Notice of Violation dated February 2, 1981.
52. MSD Conciliation Agreement dated March 2, 1981.
53. MSD Conciliation Agreement dated May 8, 1981.

54. MSD Administrative Hearing Summary dated July 27, 1981.
55. MSD Investigation Report dated July 28, 1981.
56. MSD Investigation Report dated August 24, 1981.
57. MSD Inter-Office Memorandum dated August 26, 1981.
58. MSD Administrative Hearing Summary dated September 21, 1981.
59. MSD Investigative Report dated October 1, 1981.
60. MSD Investigative Report dated October 29, 1981.
61. MSD Notice of Violation dated December 21, 1981.
62. Correspondence dated January 21, 1982 from Stone, Pogrud and Korey to MSD.
63. MSD Conciliation Agreement dated January 28, 1982.
64. MSD Investigation Report dated February 17, 1982.
65. MSD Notice of Violation dated April 5, 1982.
66. MSD Notice of Violation dated December 27, 1982.
67. MSD Computer Print-Out and Data and Reports of Investigations in September, 1983.
68. MSD Inter-Office Memorandum dated December 15, 1983.
69. Final RCRA Civil Penalty Policy

70. WASTE MGMT. MANIFEST

PLACE OF HEARING

Complainant requests that the hearing be held in Chicago, Illinois Complainant, Respondents and their attorneys, reside within, or conduct business within, the greater Chicago area. In addition Respondents' facility is located in Chicago.

DOCUMENTS PRODUCED

Copies of the inspection reports, IEPA's Compliance Inquiry Letter, and IEPA's Enforcement Notice Letter, are attached hereto as Complainant's Exhibits 2, 3, 7, 10, and 18. The IEPA Enforcement Notice Letter (Exhibit 18) is dated February 22, 1984, not March 7, 1984. A conference was held between IEPA and Respondents on March 7, 1984, pursuant to the February 22nd Enforcement Notice Letter.

LOUIS J. MAIORANO, SR. HAS BEEN
PROPERLY NAMED

The testimony is expected to show that, for at least part of the time between the years November 19, 1980 and the present (the relevant period of this administrative action) Louis J. Maiorano, Sr. was the owner and/or operator of the AERO PLATING WORKS facility within the meaning of the Resource Conservation and Recovery Act. Therefore, Mr. Maiorano, Sr. has been properly named as a Respondent to this action.

THE PROPOSED PENALTY IS REASONABLE

The proposed penalty in this case was assessed taking into consideration the seriousness of the violations at the facility and any good faith efforts made by Respondents to comply with the applicable requirements.

In determining the proposed penalty the U.S. EPA Final RCRA Civil Penalty Policy was used as guidance, (Complainant's Exhibit

69). The penalty calculation system consists of (1) determining a quality-based penalty for a particular violation (the potential for harm and the extent of deviation from a statutory or regulatory requirement); (2) considering the economic benefit of noncompliance where appropriate; and (3) adjusting the penalty for special circumstances, including degree of willfulness and/or negligence and history of noncompliance.

The evidence will show that there has been a complete disregard of hazardous waste regulations by this Company and a refusal to come into compliance with environmental laws, even after receiving formal and informal notices and warnings from the Illinois Environmental Protection Agency and local officials.

Upon applying the RCRA Final Penalty Policy guidance to the situation at Respondents' facility, the following determinations for each violation were made:

<u>VIOLATION</u>	<u>POTENTIAL FOR HARM</u>	<u>EXTENT OF DEVIATION</u>
42 U.S.C. §6925(e) 700.105(a)(26)	moderate	major
42 U.S.C. §6930(a)	moderate	moderate
725.113(a)&(b)	minor	minor
725.115(a),(b),(d) 725.274 725.294	minor	major
725.116(a),(d)	minor	major

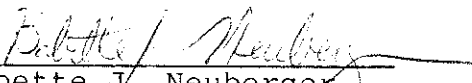
725.132(c)	moderate	moderate
725.135	minor	minor
725.137	moderate	major
725.151	moderate	major
725.152(e), (f)	moderate	major
725.153		
725.155		
725.173(a)	minor	major
725.175	minor	major
725.212(c)	moderate	major
725.213(b)	moderate	major
725.215		
725.242	moderate	major
725.243		
725.273	minor	major
725.292(b), (c)	minor	minor

Despite a four and one-half year period of non-compliance, the penalty calculation was not adjusted upward to reflect the economic savings accruing to Respondents during the period of non-compliance.

The penalty assessment does reflect Respondents' failure to achieve compliance even after receiving repeated warnings from local and State officials. The proposed penalty also reflects the potentially hazardous conditions created by Respondents' operations and failure to comply. For example, Respondents' failure to make arrangements with local authorities, and their

failure to develop a contingency plan, was determined to be of moderate potential for harm and a major deviation from the regulations because of the history of large spills at the plant and warnings about the serious potential for harm caused by the spills.

Respectfully submitted,


Babette J. Neuberger
Attorney for Complainant

CERTIFICATE OF SERVICE

I certify that the original of this PRE-HEARING EXCHANGE was served on the Regional Hearing Clerk for U.S. EPA, Region V, and that copies of same were mailed by certified mail, return receipt requested to the persons named below on June _____, 1985:

Bertram D. Stone, Esq.
Stone, Pogrud & Korey
221 N. LaSalle Street, 28th Fl.
Chicago, Illinois 60601

Gerald Harwood (A-110)
Administrative Law Judge
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460



Michelle Radcliffe

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:

AERO PLATING WORKS

CHICAGO, ILLINOIS

DOCKET NO. V-W-84-R-071

CERTIFICATE OF SERVICE

I hereby certify that the transcript of the proceedings and the exhibits in the above referenced case, and this certification have been served as shown below:

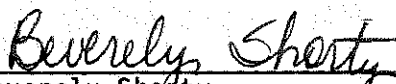
Certified mail on October 25, 1985 to:

Honorable Gerald Harwood
Administrative Law Judge (A-110)
U.S. Environmental Protection Agency
401 M. Street, S.W.
Washington, D.C. 20460

Bertram A. Stone
Stone, Pogrud & Korey
221 N. LaSalle Street, 28th Floor
Chicago, Illinois 60601

Transcript hand delivered on October 25, 1985 to:

Babette J. Neuberger
Office of Regional Counsel
U.S. Environmental Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604


Beverly Shorty
Regional Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

5MF-14

Telephone (312)353-1669

October 25, 1985

Mr. Bertram A. Stone
Stone, Pogrud & Korey
221 N. LaSalle Street, 28th Floor
Chicago, Illinois 60601

Dear Mr. Stone:

Enclosed is the transcript in the matter of Aero Plating Works,
Docket No. V-W-84-071. Reproduction costs for the transcript amount
to \$106.80 (534 pages @ .20 per page). Please forward a check in that
amount to the Financial Operations Section of U.S. Environmental
Protection Agency, 230 South Dearborn St., Chicago, Illinois, 60604.

Sincerely,

Beverly Shorty
Beverly Shorty
Regional Hearing Clerk

cc: Babette J. Neuberger
Honorable Gerald Harwood



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

5MF-14

Telephone (312) 353-1669

October 21, 1985

Honorable Gerald Harwood
Office of Administrative Law Judges
United States Environmental
Protection Agency (A-110)
401 M. Street, S.W.
Washington, D.C. 20460

Babette J. Nueberger, Esquire
Office of Regional Counsel
United States Environmental
Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604

SUBJECT: Aero Plating Works
Docket No. V-W-84-R-071

Dear Gentlemen:

Part of the transcript of the proceedings in the above subject case was served to you October 9, 1985. Please hold any material you wish to relate until all of the transcript is received.

Sincerely,

Beverly Shorty
Beverly Shorty
Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:
AERO PLATING WORKS

CHICAGO, ILLINOIS

)
)
) DOCKET NO. V-W-84-R-071
)
)

CERTIFICATE OF SERVICE

I hereby certify that the transcript of the proceedings in the above-referenced cause, and this certification have been served as shown below:

Certified mail on October 9, 1985 to:

Honorable Gerald Harwood
Administrative Law Judge (A-110)
U.S. Environmental Protection Agency
401 M. Street, S.W.
Washington, D.C. 20460

Transcript hand delivered on October 9, 1985 to:

Babette J. Neuberger
Office of Regional Counsel
U.S. Environmental Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604

Beverly Thompson
Beverly Thompson
Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF)
)
)
LOUIS J. MAIORANO, SR.)
LOUIS J. MAIORANO, JR.)
d/b/a AERO PLATING WORKS,)
)
Respondents)

DOCKET No. V-W- 84-R-071

STIPULATION OF FACT

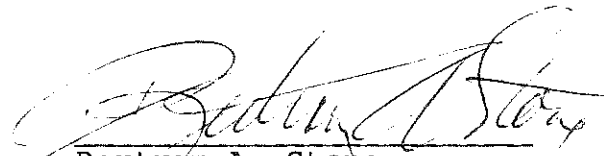
For the purpose of the above-captioned litigation, the undersigned hereby stipulate to the following facts. Issues of fact and law identified in the Complaint styled V-W-84-R-071 that are not included in these stipulations shall be the subject of the hearing scheduled to commence on Thursday, July 30, 1985.

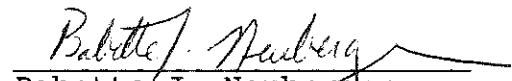
1. The Respondent, Louis J. Maiorano, Jr. was an owner and operator of the AERO PLATING WORKS at 1860 N. Elston Avenue, Chicago, Illinois 60622.
2. On December 1, 1980, the corporate charter of AERO PLATING WORKS was involuntarily dissolved by the Illinois Secretary of State.
3. The Illinois Environmental Protection Agency (IEPA) inspected the facility on September 15, 1983, and January 24, 1984.
4. Respondent, Louis J. Maiorano, Jr. filed a notification pursuant to Section 3010 of RCRA on August 19, 1981. This notification stated that AERO PLATING WORKS was a generator of hazardous waste.

5. At the time of the September 15, 1983 and January 24, 1984, inspections, hazardous wastes were stored for a period in excess of 90 days, in quantities greater than 1000 kg.
6. Samples taken by IEPA during the September, 1983 and January, 1984 inspections, indicate that cyanide bearing wastes were stored on the premises. These wastes included spent stripping and cleaning bath solutions where cyanides were used in the process (F009).
7. As of the September 15, 1983 IEPA inspection, the following violations were committed:
 - (a). A Part A application for a Hazardous Waste Management permit had not been submitted.
 - (b). The facility inspection requirements of 35 Ill. Adm. Code §725.115 (b) and (d) had not been complied with.
 - (c). Arrangements with organizations such as police, fire departments, and emergency response teams whose services might be needed in an emergency were not made.
 - (d). A contingency plan that described the actions that facility personnel must take in response to explosions or any unplanned sudden or non-sudden release of hazardous waste to the air, soil, or surface waters, at the facility had not been prepared.
 - (e). A written operating record containing a description of waste stored, quantities of waste stored, location of those wastes, and records and results of inspections was not prepared nor maintained.
 - (f). A written closure plan identifying the steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life was not prepared.

- (g). A written estimate of the cost of closing the facility was not developed.
 - (h). Neither financial assurance for the closure of the facility, financial assurance for post-closure monitoring and maintenance, nor financial responsibility for sudden and accidental occurrences had been demonstrated.
8. IEPA informed the Respondents of the violations discovered during the September 15, 1983 inspection in a Compliance Inquiry Letter dated September 21, 1983.
9. On January 24, 1984, representatives of the IEPA inspected Respondents' facility. As of January 24, 1984 the following violations were committed:
- (a). A Part A application for a Hazardous Waste Management permit had not been submitted.
 - (b). A detailed physical and chemical analysis of the waste, to obtain all the information which must be known to treat, store, or dispose of hazardous waste, had not been conducted.
 - (c). Facility inspection requirements of 35 Ill. Adm. Code §725.115(b) and (d) were not complied with.
 - (d). A written closure plan identifying the steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life was not developed.
 - (e). A written estimate of the cost of closing the facility was not developed.
10. IEPA informed the Respondents of the violations discovered during the January 24, 1984, inspection in an Enforcement Notice Letter, dated February 22, 1984, and during an enforcement conference on March 7, 1984.

11. On January 24, 1984, four of the discontinued plating tanks had been removed from the facility. Mr. Louis Maiorano Jr. stated that these four plating tanks containing F008 hazardous waste had been disposed of with the general refuse.
12. The parties stipulate that Complainant's Exhibits 5 and 6 shall be admitted into evidence.


Bertram A. Stone
Attorney for Respondents


Babette J. Neuberger
Attorney for Complainant

Plus additional documents were stipulated to.